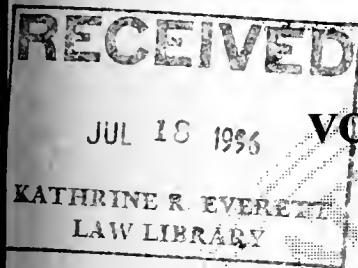


# *NORTH CAROLINA* *REGISTER*



**VOLUME 11 • ISSUE 8 • Pages 441 - 567**  
**July 15, 1996**

## **IN THIS ISSUE**

Executive Order  
Environment, Health, and Natural Resources  
Human Resources  
Soil Scientists, Licensing of  
List of Rules Codified  
Rules Review Commission  
Contested Case Decisions

## **PUBLISHED BY**

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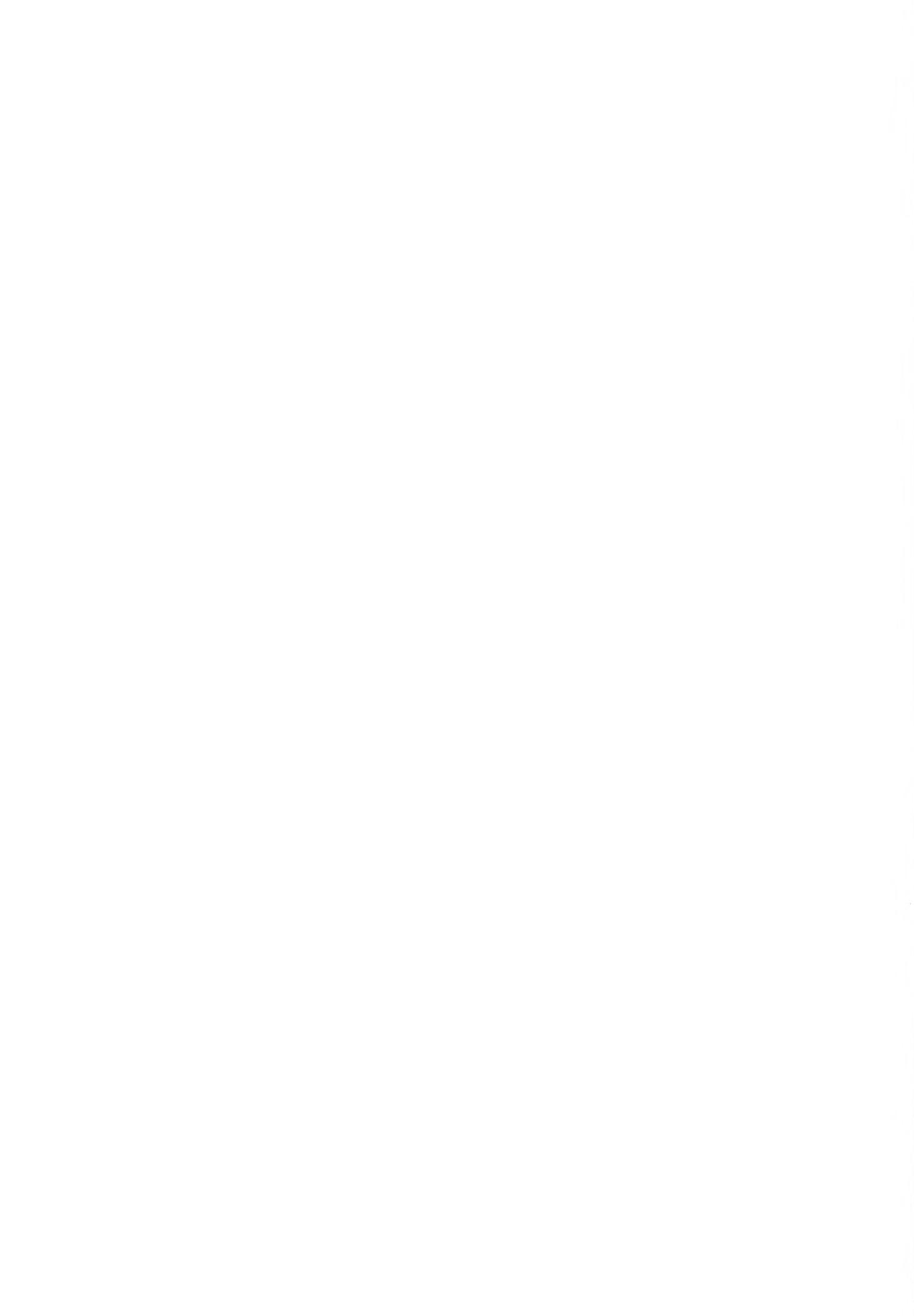
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# **NORTH CAROLINA REGISTER**



**Volume 11, Issue 8  
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**July 15, 1996**

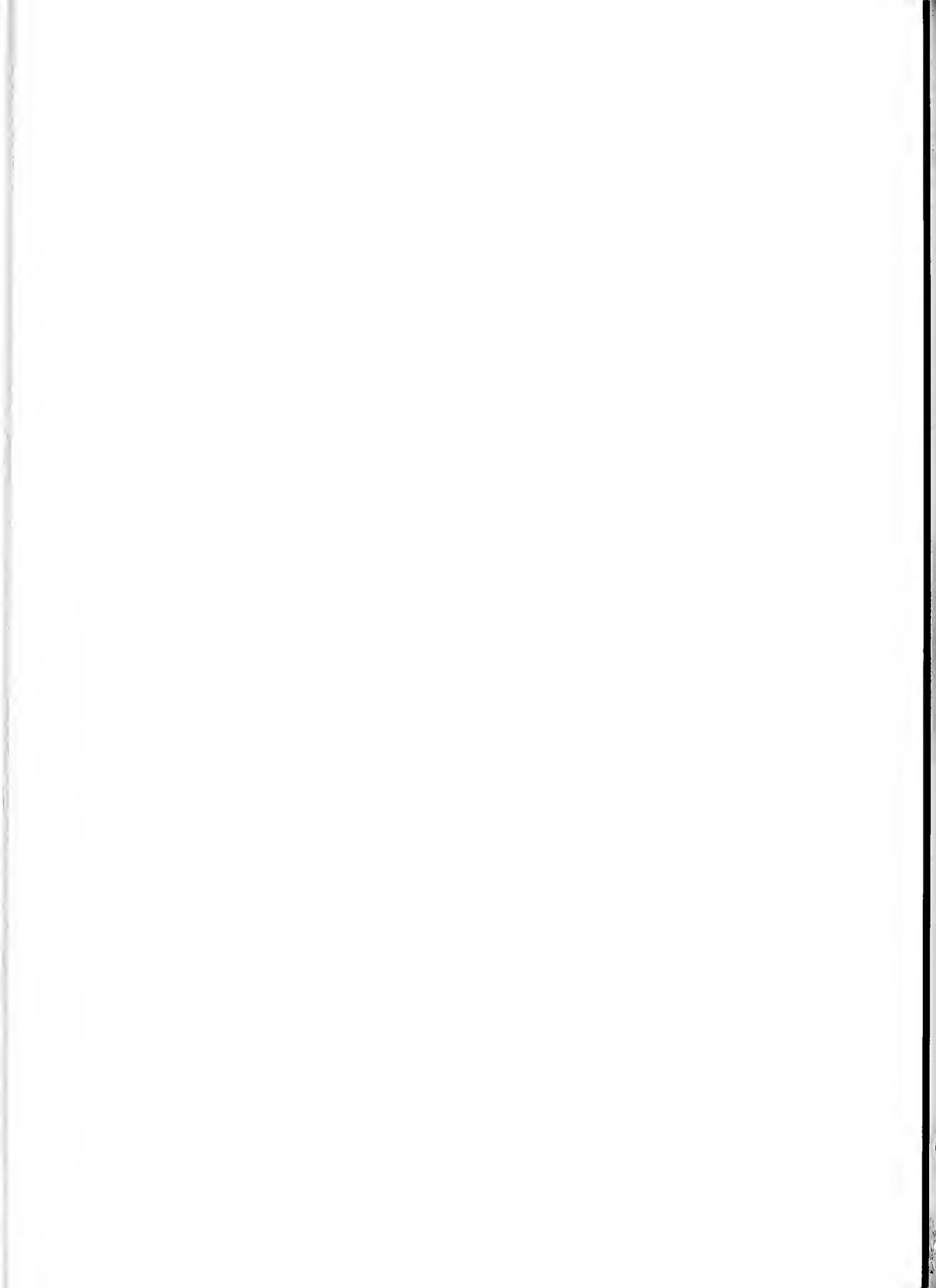
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## **IN THIS ISSUE**

<b>I. EXECUTIVE ORDER</b>	
Executive Order 96	441
<b>II. RULE-MAKING AGENDA</b>	
Environment, Health, and Natural Resources	
Coastal Management	442 - 448
Environmental Management	442 - 448
Health Services	442 - 448
Soil and Water Conservation	442 - 448
<b>III. RULE-MAKING PROCEEDINGS</b>	
Environment, Health, and Natural Resources	
Wildlife Resources Commission	451
Human Resources	
Child Day Care Commission	449
Medical Assistance	450 - 451
Mental Health, Developmental Disabilities and Substance Abuse Services	449 - 450
Vocational Rehabilitation Services	450
<b>IV. PROPOSED RULES</b>	
Environment, Health, and Natural Resources	
Environmental Management	472 - 495
Wildlife Resources Commission	495 - 523
Human Resources	
Facility Services	452 - 472
Licensing Board	
Soil Scientists, Licensing of	523 - 527
<b>V. TEMPORARY RULES</b>	
Human Resources	
Social Services Commission	528 - 535
<b>VI. APPROVED RULES</b>	
Environment, Health, and Natural Resources	
Health Services	536
<b>VII. LIST OF RULES CODIFIED</b>	537 - 543
<b>VIII. RULES REVIEW COMMISSION</b>	544 - 547
<b>IX. CONTESTED CASE DECISIONS</b>	
Index to ALJ Decisions	548 - 554
Text of Selected Decisions	
92 BME 0510	555 - 563
96 ABC 0160	564 - 566
<b>X. CUMULATIVE INDEX</b>	1 - 21



FILING DEADLINES		NOTICE OF RULE-MAKING PROCEEDINGS		NOTICE OF TEXT (either column A or column B)			
volume and issue number	issue date	last day for filing	end of comment period	A. non-substantial economic impact		B. substantial economic impact	
				earliest date for public hearing	end of required comment period	deadline to submit to RRC for review at next RRC meeting	first legislative day of the next regular session
10:17	12/01/95	11/07/95	01/30/96	02/01/96			
10:18	12/15/95	11/22/95	02/13/96	02/15/96			
10:19	01/02/96	12/07/95	03/04/96	03/15/96			
10:20	01/16/96	12/20/95	03/18/96	04/01/96			
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10:22	02/15/96	01/25/96	04/15/96	05/01/96	03/01/96	03/20/96	05/13/96
10:23	03/01/96	02/09/96	04/30/96	05/01/96	03/18/96	04/01/96	04/22/96
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11:10	08/15/96	07/25/96	10/14/96	10/15/96	08/30/96	09/16/96	09/20/96
11:11	09/03/96	08/12/96	11/04/96	11/15/96	09/18/96	10/03/96	10/21/96
11:12	09/16/96	08/23/96	11/15/96	12/02/96	10/01/96	10/16/96	10/21/96

## EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

GENERAL	FILING DEADLINES	NOTICE OF RULE-MAKING PROCEEDINGS	NOTICE OF TEXT
<p>The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:</p> <ul style="list-style-type: none"><li>(1) temporary rules;</li><li>(2) notices of rule-making proceedings;</li><li>(3) text of proposed rules;</li><li>(4) text of permanent rules approved by the Rules Review Commission;</li><li>(5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;</li><li>(6) Executive Orders of the Governor;</li><li>(7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;</li><li>(8) orders of the Tax Review Board issued under G.S. 105-241.2; and</li><li>(9) other information the Codifier of Rules determines to be helpful to the public.</li></ul>	<p><b>ISSUE DATE:</b> The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month closest to (either before or after) the first or fifteenth respectively that is not a Saturday, Sunday, or holiday for State employees.</p> <p><b>LAST DAY FOR FILING:</b> The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.</p>	<p><b>END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS:</b> This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.</p> <p><b>EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT:</b> The date of the next issue following the end of the comment period.</p>	<p><b>EARLIEST DATE FOR PUBLIC HEARING:</b> The hearing date shall be at least 15 days after the date a notice of the hearing is published.</p> <p><b>END OF REQUIRED COMMENT PERIOD</b></p> <ul style="list-style-type: none"><li>(1) RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.</li><li>(2) RULE WITH SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.</li></ul> <p><b>DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:</b> The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.</p> <p><b>FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:</b> This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.</p>

**EXECUTIVE ORDER NO. 96**  
**TASK FORCE ON RACIAL OR RELIGIOUS**  
**VIOLENCE AND INTIMIDATION**

It is the policy of the State of North Carolina to protect the right of every person in the state to worship freely without fear or threat of violence and intimidation. Freedom from crime and freedom to worship are basic civil rights of all our citizens. We oppose all those who espouse hatred and violence as a means to intimidate anyone who seeks to exercise their constitutional rights and freedoms.

NOW THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina,  
**IT IS ORDERED:**

**Section 1.**

There is hereby established the Task Force on Racial or Religious Violence and Intimidation.

**Section 2.**

The Task Force shall consist of 21 persons to include the following:

- (1) The Attorney General;
- (2) The Secretary of Crime Control and Public Safety;
- (3) The Director of the State Bureau of Investigation;
- (4) The Chairperson of the North Carolina Human Relations Commission;
- (5) The Chairperson of the Martin Luther King Jr. Commission;
- (6) 16 persons appointed by the Governor as follows:
  - (a) A District Attorney
  - (b) A United States Attorney
  - (c) A Police Chief
  - (d) A Sheriff
  - (e) A member of the North Carolina Senate
  - (f) A member of the North Carolina House of Representatives
  - (g) A representative of the Federal Bureau of Investigation
  - (h) A representative of the Bureau of Alcohol, Tobacco and Firearms
  - (i) Four ministers
  - (j) Four citizens at-large

Each such person shall serve for a term expiring December 31, 1996.

The Chairperson of the Task Force shall be the Attorney General. The Vice Chairperson shall be appointed by the Governor.

**Section 3.**

The Task Force shall meet as frequently as needed. The

first meeting of the Task Force shall be held as soon as possible after the appointment of its members.

**Section 4.**

The Task Force shall perform such duties as are assigned by the Governor and the Attorney General and shall work closely with the staff of the North Carolina Human Relations Commission and the North Carolina Department of Justice. The following shall be among its duties:

- (a) Establish a uniform statewide system for reporting, recording and responding to incidences of arson, vandalism and bomb threats against churches and other institutions, and racial or religious groups or associations;
- (b) Establish a central location for the collection, analysis and dissemination of data relating to racial and religious violence;
- (c) Research policies, procedures and laws pertaining to hate group activities and racially motivated violence and intimidation, and recommend changes where needed to existing legislation;
- (d) Establish a statewide assistance and support network for churches and other institutions and racial or religious groups or associations that are victims of racial or religious violence and intimidation;
- (e) Educate the public and law enforcement officials about racial and religious violence and intimidation and provide training in responding to such activity;
- (f) Coordinate all activities related to racial and religious violence and develop a plan of implementation and monitoring;
- (g) Encourage and facilitate cooperation and coordination of all law enforcement activities dealing with racial or religious violence and intimidation; and
- (h) Update the Governor at regular intervals on the status of the Task Force activities and submit a final report by December 31, 1996.

**Section 5.**

While on official business, members of the Task Force shall be entitled to reimbursement for travel and subsistence as may be authorized for members of State boards and commissions generally. The North Carolina Human Relations Commission and the North Carolina Department of Justice shall provide planning and administrative support for the Task Force.

This Executive Order shall become effective immediately and shall remain in effect until December 31, 1996.

Done in the Capital City of Raleigh, North Carolina this the 14th day of June 1996.

*An agency may choose to publish a rule-making agenda which serves as a notice of rule-making proceedings if the agenda includes the information required in a notice of rule-making proceedings. The agency must accept comments on the agenda for at least 60 days from the publication date. Statutory reference: G.S. 150B-21.2.*

**TITLE 15A  
DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

This supplemental agenda will serve as the notice of rule-making proceedings for the following rule-making bodies from July 15, 1996 through September 13, 1996:

Environmental Management Commission - to rules codified in 15A NCAC 2;  
Soil and Water Conservation Commission - to rules codified in 15A NCAC 6;  
Coastal Resources Commission - to rules codified in 15A NCAC 7; and  
Commission for Health Services - to rules codified in 15A NCAC 13B and 18A.

DEHNR Regulatory Agenda Index - June 20, 1996

**AIR QUALITY**

<b>APA#</b>	<b>SUBJECT</b>	<b>RULE CITATION #</b>
E2002	Air Toxics	15A NCAC 2D .1100, 2H .0610, 2Q .0700

**COASTAL MANAGEMENT**

<b>APA #</b>	<b>SUBJECT</b>	<b>RULE CITATION #</b>
E1994	Use Standards for Ocean Hazard Areas: Exceptions	15A NCAC 7H .0309

**ENVIRONMENTAL HEALTH/ENV. HEALTH SERVICES**

<b>APA #</b>	<b>SUBJECT</b>	<b>RULE CITATION #</b>
H6386	Sanitation of Hospitals: Nursing and Rest Homes: Sanitariums: Educational and Other Institutions	15A NCAC 18A .1300 .1301, .1302, and .1319
H6387	Handling: Packing: Repacking: and Shipping of Crustacea and Crustacea Meat	15A NCAC 18A .0134, .0136, .0137, .0159, .0168, .0169, .0173, .0174, .0175, .0176, .0182, .0183, .0184, .0185, .0187
H6388 .0614,	Rules Governing the Sanitation of Shellfish	15A NCAC 18A .0301, .0302, .0401, .0421, .0424, .0425, .0615, .0616, .0617, .0618, .0620, .0621, .0901

**SOIL AND WATER CONSERVATION**

<b>APA #</b>	<b>SUBJECT</b>	<b>RULE CITATION #</b>
N1712	Agriculture Cost Share Program - Allocation Guidelines and Procedures	15A NCAC 6E .0003

**WASTE MANAGEMENT**

<b>APA #</b>	<b>SUBJECT</b>	<b>RULE CITATION #</b>
E1990	Household Hazardous Waste	15A NCAC 13B .1800
E2005	Landfill Closure	15A NCAC 13B .1627

DEHNR Regulatory Agenda - June 20, 1996

APA #: E1990  
SUBJECT: Household Hazardous Waste  
RULE CITATION #: 15A NCAC 13B .1800  
STATUTORY AUTHORITY: G.S. 130A-294

**DIVISION/SECTION: WASTE MANAGEMENT**

**DIVISION CONTACT: Joan Troy**

**DIVISION CONTACT TEL#: (919)733-0692**

**DATE INITIATED: 6/17/96**

**DURATION OF RULE: Permanent 4/1/97**

**TYPE OF RULE:**

**STAGE OF DEVELOPMENT: Draft Rule Stage**

**GOV LEVELS AFFECTED: None**

**REASON FOR ACTION :**

The purpose of this rule-making action is to ensure that household hazardous waste facilities which also may accept conditionally exempt small quantity generator hazardous waste operate in an efficient and environmentally acceptable manner.

**SCOPE/NATURE/SUMMARY :**

These Rules outline the requirements for the establishment and operation of facilities that collect and store household hazardous wastes and hazardous wastes from conditionally-exempt small quantity generators.

**APA #: E1994**

**SUBJECT: Use Standards for Ocean Hazard Areas: Exceptions**

**RULE CITATION #: 15A NCAC 7H .0309**

**STATUTORY AUTHORITY: G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124**

**DIVISION/SECTION: COASTAL MANAGEMENT**

**DIVISION CONTACT: Preston Pate**

**DIVISION CONTACT TEL#: (919)726-7021**

**DATE INITIATED: 6/18/96**

**DURATION OF RULE: Permanent 4/1/97**

**TYPE OF RULE:**

**STAGE OF DEVELOPMENT: Draft Rule Stage**

**GOV LEVELS AFFECTED: None**

**REASON FOR ACTION :**

Response to request from pier owners for consideration of the hardship created by the current rules, and the benefits provided by their facilities.

**SCOPE/NATURE/SUMMARY :**

Current rules do not allow replacement of structures in the Ocean Hazard AEC that do not conform to current requirements for setbacks, etc. The new rule will make an exception for pier houses associated with piers providing public access to the beaches and ocean waters. The proposed amendment to pier house rules will in effect grandfather existing pier houses as of January 2, 1996. The new rule will allow those structures to be maintained or replaced in their current configuration, so as not to put an undue financial burden on the owner by eliminating the use of the structure.

**APA #: E2002**

**SUBJECT: Air Toxics**

**RULE CITATION #: 15A NCAC 2D .1100, 2H .0610, 2Q .0700**

**STATUTORY AUTHORITY: G.S. 143-213; 143-215.3(a)(1); 143-215.68; 143-215.107(a)(1), (3), (4), (5), (10); 143-215.108; 143B-282;**

**DIVISION/SECTION: AIR QUALITY**

**DIVISION CONTACT: Thom Allen**

**DIVISION CONTACT TEL#: (919)733-7015 ext. 1489**

**DATE INITIATED: 6/25/96**

**DURATION OF RULE: Permanent 4/1/97**

**TYPE OF RULE:**

**STAGE OF DEVELOPMENT: Draft Rule Stage**

**GOV LEVELS AFFECTED: None**

**REASON FOR ACTION :**

To incorporate changes recommended by the Air Toxic Working Group, to revise several acceptable ambient levels, and to revise the procedure for bringing facilities under the air toxic

**SCOPE/NATURE/SUMMARY :**

The Legislative Review Commission established an Air Toxic Working Group to review and evaluate the NC

air toxic rules to determine if changes were needed in the air toxics program. The Air Toxic Working Group made several recommendations that involve rule changes. The changes include:

1. giving industry the option of having Air Quality to do the initial modeling,
2. changing the averaging time for acute irritants from 15 minutes to one hour,
3. including pollution prevention plan requirement as part of maximum feasible control technology,
4. exempting boilers burning only unadulterated fuel, and
5. exempting insignificant activities where appropriate.

Based on recommendations from the Scientific Advisory Board, acceptable ambient levels for several existing compounds are proposed to be revised, and acceptable ambient levels are proposed for several new compounds. The existing compounds proposed for revision include 1,3-butadiene ( $4.6 \times 10^{-6}$  mg/m<sup>3</sup> annual average), toluene diisocyanate (0.0002 mg/m<sup>3</sup> 24-hour average), and methylene chloride. The new compounds include methanol (26 mg/m<sup>3</sup> 24-hour average), glutaraldehyde (0.006 mg/m<sup>3</sup> 24-hour average), n-butanol (3.85 mg/m<sup>3</sup> 24-hour average), acrylic acid (0.1 mg/m<sup>3</sup> one-hour average), allyl chloride (0.012 mg/m<sup>3</sup> 24-hour average, methylene diphenyl isocyanate, and hexamethylene diisocyanate (0.00003 mg/m<sup>3</sup> 24-hour average).

Other changes being considered include adding a schedule by which facilities with no sources subject to a MACT (maximum achievable control technology) requirement, excluding the boiler MACT, would submit applications to comply with the air toxic rules. The schedule would most likely be based on standard industrial codes. Facilities with one or more sources subject to a MACT requirement, excluding the boiler MACT, would submit applications to comply with the air toxic rules along with the application to comply with the last MACT.

The aforementioned rule changes would be made to 15A NCAC 2D .1100 and 2H .0610, which is to be recodified as 15A NCAC 2Q .0700.

APA #: E2005

SUBJECT: Landfill Closure

RULE CITATION #: 15A NCAC 13B .1627

STATUTORY AUTHORITY: G.S. 130A-294

DIVISION/SECTION: WASTE MANAGEMENT

DIVISION CONTACT: Joan Troy/Dexter Matthews

DIVISION CONTACT TEL#: (919)733-0692

DATE INITIATED: 6/27/96

DURATION OF RULE: Permanent

TYPE OF RULE:

STAGE OF DEVELOPMENT: Draft Rule Stage

GOV LEVELS AFFECTED: None

REASON FOR ACTION :

The purpose of the rule amendments is to require owners and operators of unlined landfills to provide a more environmentally sound cap system than is currently required for unlined landfills at closure. Further the amendments avoid fiscal impact to the regulated community by providing that the increased cost of a superior cap system may be covered by appropriate delay of that landfill's closure.

SCOPE/NATURE/SUMMARY:

The proposed amendment changes an existing rule that requires existing municipal solid waste landfills that are not designed and constructed with a base liner system permitted by the Division to cease receiving solid waste on or before January 1, 1998. The changed rule will require a cap system that reduces infiltration into the landfills as expeditiously as possible while avoiding fiscal impact through tip fees after 1 January 1998.

APA #: H6386

SUBJECT: Sanitation of Hospitals: Nursing and Rest Homes: Sanitariums: Educational and Other Institutions

RULE CITATION #: 15A NCAC 18A .1301, .1302, and .1319

STATUTORY AUTHORITY: G.S. 130A-235

DIVISION/SECTION: ENVIRONMENTAL HEALTH/ENV. HEALTH SERVICES

DIVISION CONTACT: Bob Benton

DIVISION CONTACT TEL#: (919)726-6827

DATE INITIATED: 6/14/96

DURATION OF RULE: Permanent

**TYPE OF RULE:**

**STAGE OF DEVELOPMENT:** Draft Rule Stage

**GOV LEVELS AFFECTED:** None

**REASON FOR ACTION :**

Educational facilities are deemed to be inappropriately addressed in the institutional rules.

**APA #:** H6387

**SUBJECT:** Handling; Packing; and Shipping of Crustacea and Crustacea Meat

**RULE CITATION #:** 15A NCAC 18A .0134, .0136, .0137, .0159, .0168, .0169, .0173, .0174, .0175, .0176, .0182, .0183, .0184, .0185, .0187

**STATUTORY AUTHORITY:** G.S. 106-129; 106-130; 130A-230

**DIVISION/SECTION:** ENVIRONMENTAL HEALTH/ENV. HEALTH SERVICES

**DIVISION CONTACT:** Bob Benton

**DIVISION CONTACT TEL#:** (919)726-6827

**DATE INITIATED:** 6/14/96

**DURATION OF RULE:** Permanent

**TYPE OF RULE:**

**STAGE OF DEVELOPMENT:** Draft Rule Stage

**GOV LEVELS AFFECTED:** None

**REASON FOR ACTION :**

The agency and the crustacea industry believe that changes in the existing crustacea rules are needed so that crustacea meat from out-of-state sources can be repacked. This activity is allowed in other states and puts the industry in North Carolina at a disadvantage.

Other needed changes deal with heat processing, labeling, freezing and bacteriological standards.

**SCOPE/NATURE/SUMMARY :**

**.0134 Definitions**

(1) and (9) are proposed for revision to more clearly define adulterated and misbranded crustacea and crustacea meat.

(13) is proposed for revision to include repacking and thermal processing.

(14) is proposed for revision to conform to the proposed changes in Rule .0173

(17) is proposed for adoption to define thermal processing. Thermal processing is a new concept in the crustacea industry. Proposed rules .0184, .0185, .0186 and .0187 relate to thermal processing.

**.0136 Applicability of Rules**

This Rule is proposed for revision to clearly define the coverage of crustacea rules.

**.0137 General Requirements for Operation**

(c) is proposed for revision to require crustacea and crustacea meat purchase records and to make records of purchases and sales available to the Division.

**.0159 Separation of Operations**

(8) and (10) are proposed for addition to require separation for thermal processing and repacking from other crustacea operations.

**.0168 Single Service Containers**

(a) and (b) are proposed for revision to require that repacking containers be approved by the Division and shall not be reused.

(c), (d), (e) and (f) are proposed for revision to allow labeling lids.

(g) is proposed for revision to require notification to consumers that containers of crustacea products are "Sealed For Your Protection."

**.0169 Freezing**

(a) is proposed for revision to delete the requirement that crustacea or crustacea meat be frozen within 48 hours of packing. The requirement is not enforceable on products imported into North Carolina.

(b) is proposed for revision to provide labeling of crustacea or crustacea meat which is thawed prior to sale.

(c) is proposed for revision for clarification to include whole cooked crustacea.

**.0173 Repacking**

This Rule is proposed for revision to allow the repacking of crustacea meat produced outside of North Carolina. Part of this rule is proposed to be deleted since the Division has no control over the processing of imported crustacea meat.

**.0174 Pasteurization Process Controls - Thermometers**

(I) is proposed for addition to allow the use of new technologies to support Division requirements.

**.0175 Preparation of Crustacea Meat for Pasteurization**

This Rule is proposed for revision to include Rule .0183.

**.0176 Pasteurization of Crustacea Meat**

This Rule is proposed for revision to delete the requirement that crustacea meat be pasteurized within 48 hours of picking. The Division is unable to determine when imported crustacea is picked.

**.0182 Bacteriological and Contamination Standards**

(c) is proposed to establish bacteriological standards for thermally processed crustacea or crustacea meat.

**.0183 Alternative Labeling**

This Rule is proposed for adoption to allow adhesive labels to meet labeling requirements. This change is to conform to current food industry practices.

**.0184 - .0187**

These Rules are proposed for adoption to allow crustacea and crustacea meat to be thermally processed to enhance shelf life. These proposed rules will provide the Division with enforcement authority and industry with guidelines to ensure that crustacea and crustacea meat can be safely processed.

APA #: H6388

SUBJECT: Rules Governing the Sanitation of Shellfish

RULE CITATION #: 15A NCAC 18A .0301, .0302, .0401, .0421, .0424, .0425, .0614, .0615, .0616, .0617, .0618, .0620, .0621, .0901

STATUTORY AUTHORITY: G.S. 130A-230

DIVISION/SECTION: ENVIRONMENTAL HEALTH/ENV. HEALTH SERVICES

DIVISION CONTACT: Bob Benton

DIVISION CONTACT TEL#: (919)726-6827

DATE INITIATED: 6/14/96

DURATION OF RULE: Permanent

TYPE OF RULE:

STAGE OF DEVELOPMENT: Draft Rule Stage

GOV LEVELS AFFECTED: None

REASON FOR ACTION :

The proposed changes in the Rules Governing the Sanitation of Shellfish are needed to bring North Carolina's rules into conformity with the National Shellfish Sanitation Program guidelines which are administered by the US Food and Drug Administration.

SCOPE/NATURE/SUMMARY :

**.0301 Definitions**

(5) is proposed for adoption to define certification number to conform to FDA Manual of Operations.

**.0302 Permits**

is proposed for change to require that approval for wet storage shall be granted only to persons permitted in this Rule.

**.0401 Applicability of Rules**

is proposed for change to delete temperature and tagging requirements on shellfish in possession of individuals for personal consumption.

**.0421 Daily Record**

is proposed for change to require permitted dealers to maintain records of both wholesale and retail sales of shellfish. In addition, the rule is proposed for change to allow innovative record keeping in lieu of permanently bound ledgers.

**.0424 Shellfish Receiving**

is proposed for change to delete the tagging exemption from a harvester to a permitted dealer. NC Division of Marine Fisheries requires that all harvesters tag each container of shellfish prior to sell.

**.0425 Tagging**

(2) is proposed for revision to be consistent with the proposed rule change in .0301(5) which defines certification number. (4) is proposed for revision to include the country or state abbreviation for harvest location. This change is to conform to FDA Manual of Operations.

**.0614 Containers**

(b) and (d) are proposed for revision to provide consistency of terminology. (c) is proposed for revision to be consistent with FDA Manual of Operations.

**.0615 Shellfish Cooling**

is proposed for revision for consistency within rules and to be consistent with proposed change in Rule .0616.

**.0616 Shellfish Freezing**

(b) is proposed for deletion to allow shellfish to be thawed for resale or repacking. In addition, the change will be consistent with FDA Manual of Operations.

**.0617 Shipping** (a) is proposed for revision to provide consistency within rules.

**.0618 Heat Shock Method of Preparation of Shellfish**

(I) is proposed for revision to provide consistency of terminology within rules.

**.0620 Shellfish Thawing and Repacking**

is proposed for adoption to establish criteria to ensure product safety and labeling requirements during thawing and repacking.

**.0621 Recall Procedure**

is proposed for adoption to require each certified dealer to have a recall procedure to more easily facilitate a product recall and to conform to FDA Manual of Operations.

**.0901 Definitions**

(19) is proposed for revision to include scallops to conform to FDA Manual of Operations.

APA #: N1712

SUBJECT: Agriculture Cost Share Program - Allocation Guidelines and Procedures

RULE CITATION #: 15A NCAC 6E .0002, .0003

STATUTORY AUTHORITY: G.S. 139-4; 139-8; 143-215.74; 143B-294

DIVISION/SECTION: SOIL AND WATER CONSERVATION

DIVISION CONTACT: Vernon Cox

DIVISION CONTACT TEL#: (919)715-6109

DATE INITIATED: 6/3/96

DURATION OF RULE: Permanent

TYPE OF RULE:

STAGE OF DEVELOPMENT: Draft Rule Stage

GOV LEVELS AFFECTED: None

REASON FOR ACTION :

The Division of Soil & Water Conservation (DSWC), with the approval of the Soil and Water Conservation Commission, proposes that the rules outlined in 15A NCAC 06E .0003 (d), (e) and (f) be amended.

The proposed rule change will amend the guidelines for allocating cost share funds by changing the deadline for

Districts to encumber funds, request to retain unencumbered funds, and to request additional cost share funds from the Commission. Changing the dates by which these activities will occur will provide the staff of the DSWC additional time needed to process the contracts in order to meet the regulatory deadlines of the program.

**SCOPE/NATURE/SUMMARY :**

Section .0003 of Subchapter 6E outlines the allocation guidelines and procedures for the Agriculture Cost Share Program.

As the Agricultural Cost Share Program has expanded, the number of contracts processed by the staff of the DSWC has increased dramatically, with a significant number of contracts arriving just before the deadline for Soil and Water Conservation Districts to encumber funds to contracts.

The rule change will move up by two weeks the date by which Districts must encumber cost share funds or have the funds subject to recall by the Commission. This date will be changed from the first Wednesday in March to the third Wednesday in February. Districts with unencumbered funds on that date will continue to have the option to submit a request to the Commission to retain these funds. This amendment would change the date by which these requests must be received from the second Wednesday in March to the first Wednesday in March and specifies that the requests must be received by the Division by 9:30 a.m. on that date. The final change to the rules would require that Districts apply for any additional cost share funds that may be available by the first Wednesday in March, rather than the second Wednesday of that month.

**A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as rule-making proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.**

**TITLE 10 - DEPARTMENT OF HUMAN RESOURCES**

**CHAPTER 3 - FACILITY SERVICES**

**SUBCHAPTER 3U - CHILD DAY CARE STANDARDS**

**N**otice of Rule-making Proceedings is hereby given by the NC Child Day Care Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rules Affected by this Rule-Making:** 10 NCAC 03U .0700, .2510, and .2606. Other rules may be proposed in the course of the rule-making process.

**Authority for the rule-making:** G.S. 110-91(8); 143B-168.3

**Statement of the Subject Matter:** Qualification requirements for child day care administrators and child day care teachers.

**Reason for Proposed Action:** To amend the rules to change language related to training requirements for administrators and caregivers.

**Comment Procedures:** Questions or written comments regarding these matters may be directed to Jeanne Marlowe, APA Coordinator, Division of Child Development, 319 Chapanoke Road, P.O. Box 29553, Raleigh, NC 27626-0553; (919) 662-4527.

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**CHAPTER 3 - FACILITY SERVICES**

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**Citation to Existing Rules Affected by this Rule-Making:** 10 NCAC 03U .0901. Other rules may be proposed in the course of the rule-making process.

**Authority for the rule-making:** G.S. 110-91(2); 143B-168.3

**Statement of the Subject Matter:** General nutrition requirements for children in day care facilities.

**A Public Hearing** will be conducted at 4:00 - 8:00 p.m. on September 4, 1996 at the Division of Child Development, 319 Chapanoke Road, Room 300, Raleigh, NC.

**Reason for Proposed Action:** A petition was filed by Kathie Adams to amend this Rule to exempt day care facilities which do not supply food for children from minimum nutritional requirements. The Commission does not endorse the petition.

**Comment Procedures:** Questions or written comments regarding this matter may be directed to Jeanne Marlowe, APA Coordinator, Division of Child Development, 319 Chapanoke Road, P.O. Box 29553, Raleigh, NC 27626-0553; (919) 662-4527.

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**CHAPTER 14 - MENTAL HEALTH: GENERAL**

**CHAPTER 15 - MENTAL HEALTH: HOSPITALS**

**CHAPTER 45 - COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES**

**N**otice of Rule-making Proceedings is hereby given by the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rules Affected by this Rule-Making:** 10 NCAC 14V .3400, .3800, .5600; 15A .0100; 45H .0200. Other rules may be proposed in the course of the rule-making process.

**Authority for the rule-making:** G.S. 20-179; 20-179.2; 90-88; 90-89; 122C-3; 122C-26; 122C-112; 122C-117; 143B-147

**Statement of the Subject Matter:**

**10 NCAC 14V .3400 - Residential Treatment/Rehabilitation for Individuals with Substance Abuse Disorders**

**10 NCAC 14V .3800 - Alcohol and Drug Education Traffic Schools (Adets)**

**10 NCAC 14V .5600 - Supervised Living for Individuals of All Disability Groups**

**10 NCAC 15A .0100 - Admission and Discharge of Adults and Minors To and From Regional Psychiatric Hospitals**

**10 NCAC 45H .0200 - Schedules of Controlled Substances**

**Reason for Proposed Action:**

**10 NCAC 14V .3400, .3800, .5600 - To clarify language contained in these Rules.**

**10 NCAC 15A .0100 - To repeal rules with duplicative language.**

**10 NCAC 45H .0200 - To schedule a controlled substance to be consistent with actions by the Drug Enforcement Association.**

**Comment Procedures:** Written comments may be submitted to Charlotte F. Hall, Rule-making Coordinator, Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS), 325 N. Salisbury Street, Albemarle Bldg., Suite 558, Raleigh, NC 27603-5906, FAX 919-733-8259. Comments will be accepted through September 13, 1996.

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## **CHAPTER 20 - VOCATIONAL REHABILITATION**

**Notice of Rule-making Proceedings** is hereby given by the Department of Human Resources, Division of Vocational Rehabilitation Services in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rules Affected by this Rule-Making:** 10 NCAC 20B .0200; 20C .0600; 20D .0200. Other rules may be proposed in the course of the rule-making process.

**Authority for the rule-making:** G.S. 143-545A; 143-546A; 34 C.F.R. 361.36; 34 C.F.R. 361.45; 34 C.F.R. 361.48

**Statement of the Subject Matter:**

**10 NCAC 20B .0200** contains the Division's procedures for conducting administrative reviews and appeals hearings.

**10 NCAC 20C .0600** contains the Division's policies governing an order of selection for services if the Division is not able to furnish services to all eligible individuals who

apply.

**10 NCAC 20D .0200** contains the standards for facilities and community rehabilitation programs that must be met if the Division uses them to furnish services to clients.

**Reason for Proposed Action:**

**10 NCAC 20B .0200** is being amended to assign the responsibilities formerly performed by the Deputy Director to the Head of Casework Services because the Division no longer has the Deputy Director position and to make technical correction to the rules.

**10 NCAC 20C .0600** is being amended because the rules do not meet all the requirements of the final federal regulations on the order of selection for service process. The current priority for individuals being served by a program designed to help individuals transition from school to work does not meet federal requirements and must be changed.

**10 NCAC 20D .0200** is being amended because the Division is no longer monitoring standards itself. The change will set two options for community rehabilitation programs: (1) to receive a fixed level of funding programs would have to meet the standards of a national accreditation body specified by the Division; or (2) not receiving a fixed level of funding programs would have to meet the requirements of the accreditation process of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

**Comment Procedures:** The record will be open for receipt of written comments on these proposed action from July 15, 1996 until September 13, 1996. Written comments should be mailed to Jackie Stalnaker, P.O. Box 26053, Raleigh, NC 27611.

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## **CHAPTER 26 - MEDICAL ASSISTANCE**

### **SUBCHAPTER 26G - PROGRAM INTEGRITY**

**Notice of Rule-making Proceedings** is hereby given by the DHR/Division of Medical Assistance in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rules Affected by this Rule-Making:** 10 NCAC 26G .0707. Other rules may be proposed in the course of the rule-making process.

**Authority for the rule-making:** G.S. 108A-25(b); 108A-54; 108A-63; 42 C.F.R. Part 455

**Statement of the Subject Matter:** Federal Regulation 42 CFR 455, Program Integrity Medicaid, sets the requirements for reporting, detecting and identifying fraud and abuse within the Medicaid program. As a condition of receiving

*Federal Financial Participation, the Medicaid agency must recoup all moneys paid out inappropriately. The federal share of this money must be refunded to the Health Care Financial Administration. The wording in Paragraph (b) of this Rule, will not allow recoupment of moneys identified through Disproportionate Stratified Random Sampling Technique for first time offenders. This could endanger the Federal Financial Participation in that the agency is not recouping moneys paid out inappropriately because of the present rule. The federal government could request the State to pay back federal moneys out of State Funds for the State's failure to follow Federal Regulations. This could cause hardship to the State and to Medicaid recipients.*

**Reason for Proposed Action:** *Medicaid Pays Part B Premium for approximately 200,000 dual eligible recipients. Medicaid pays the co-insurance and deductible on claims filed to Medicare for this category of recipients. Medicare pays 80% of the cost of care on this category of recipients. Medicaid pays 20% (co-insurance and deductible) on this category of recipients. At the present Medicare makes recoupments from providers that serve this category of recipients using a Disproportionate Stratified Random Sampling Technique. Medicaid is unable to recoup the (20% co-insurance and deductible) on these claims because our present rule states that the "Agency will use a Disproportionate Stratified Random Sampling Technique in establishing provider overpayments only for repeat offenders." This needs to include first time offenders also. Approximately 65% of all Medicaid funds are federal moneys. These payments amount to millions of dollars.*

**Comment Procedures:** *Written comments concerning this rule-making action must be submitted by September 13, 1996 to Portia Rochelle, APA Coordinator, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603.*

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## **TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

### **CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY**

*Notice of Rule-making Proceedings is hereby given by the North Carolina Wildlife Resources Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

**Citation to Existing Rules Affected by this Rule-Making:** *15A NCAC 10F .0307. Other rules may be proposed in the course of the rule-making process.*

**Authority for the rule-making:** *G.S. 75A-3; 75A-15; S.L. 1965, ch. 1205*

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**Statement of the Subject Matter:** *Establish No-Wake Zone on Lake Norman in Iredell County.*

**Reason for Proposed Action:** *To regulate boat speed in congested area.*

**Comment Procedures:** *The record will be open for receipt of written comments from July 15, 1996 through September 13, 1996. Such written comments must be delivered or mailed to the North Carolina Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.*

*This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency must publish a notice of rule-making proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars (\$5,000,000). Statutory reference: G.S. 150B-21.2.*

## **TITLE 10 - DEPARTMENT OF HUMAN RESOURCES**

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to amend rules cited as 10 NCAC 3R .3001, .3010, .3020, .3030, .3032, .3040, .3050. These rules were filed as temporary rules and published in the Register on February 1, 1996. Publication of the temporary rules served as notice of rule-making proceedings.

**Proposed Effective Date:** *February 1, 1997*

**A Public Hearing** will be conducted at 10:30 a.m. on August 14, 1996 at the Council Building, Room 201, Dorothea Dix Campus, 701 Barbour Drive, Raleigh, NC.

**Reason for Proposed Action:** *To adopt as permanent rules the temporary rules that established the 1996 State Medical Facilities Plan. Publication of the temporary rules appeared in the NC Register dated February 1, 1996. The text is identical to the text published in the Register with the exception of Rule .3030(8)(a)-(d).*

**Comment Procedures:** *Questions or written comments regarding this matter may be directed to Mr. Jackie Sheppard, APA Coordinator, Division of Facility Services, 701 Barbour Drive, PO Box 29530, Raleigh, NC 27626-0530. Written comments will be accepted up to and including September 13, 1996.*

**Fiscal Note:** *These Rules affect the expenditures or revenues of local government funds and the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143. These Rules do have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.*

### **CHAPTER 3 - FACILITY SERVICES**

#### **SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS**

##### **SECTION .3000 - STATE MEDICAL FACILITIES PLAN**

###### **.3001 CERTIFICATE OF NEED REVIEW CATEGORIES**

The agency has established nine categories of facilities and services for certificate of need review and will determine the appropriate review category or categories for all applications submitted pursuant to 10 NCAC 3R .0304. For proposals which include more than one category, the agency may require the applicant to submit separate applications. If it is not practical to submit separate applications, the agency will determine in which category the application will be reviewed. The review of an application for a certificate of need will commence in the next review schedule after the application has been determined to be complete. The nine categories of facilities and services are:

- (1) Category A. Proposals for acute health service facilities, except those proposals included in Categories B through H, including but not limited to the following types of projects: renovation, construction, equipment, and acute care services.
- (2) Category B. Proposals for long-term nursing facility and new continuing care facilities applying for exemption under 10 NCAC 3R .3050 (b)(2).
- (3) Category C. Proposals for new psychiatric facilities; psychiatric beds in existing health care facilities; new intermediate care facilities for the mentally retarded (ICF/MR) and ICF/MR beds in existing health care facilities; new substance abuse and chemical dependency facilities; substance abuse and chemical dependency beds in existing health care facilities.
- (4) Category D. Proposals for new or expanded end stage renal disease treatment facilities; dialysis stations in response to the "county need" or "facility need" methodologies; and relocations of existing dialysis stations to another county.

- (5) Category E. Proposals for new or expanded inpatient rehabilitation facilities and inpatient rehabilitation beds in other health care facilities; and new or expanded ambulatory surgical facilities except those proposals included in Category H.
- (6) Category F. Proposals for new home health agencies or offices, new hospice home care programs, new hospice inpatient beds, and new hospice residential beds.
- (7) Category G. Proposals for converting hospital beds to nursing care under 10 NCAC 3R .3050 (b)(1); and for ~~demonstration projects designated in the SMFP~~, new dialysis stations as the result of "adjusted need determinations" for Dare and Carteret counties.
- (8) Category H. Proposals for bone marrow transplantation services, burn intensive care services, neonatal intensive care services, open heart surgery services, solid organ transplantation services, air ambulance equipment, cardiac angioplastie angioplasty equipment, cardiac catheterization equipment, heart-lung bypass machine, machines, gamma knife, knives, lithotriptors, magnetic resonance imaging scanner, scanners, positron emission tomography scanners, and major medical equipment as defined in G.S. 131E-176(14f), diagnostic centers as defined in G.S. 131E-176(7a), and oncology treatment centers as defined in G.S. 131E-176(18a).
- (9) Category I. Proposals involving cost overruns; expansions of existing continuing care facilities which are licensed by the Department of Insurance at the date the application is filed and are applying under exemptions from need determinations in 10 NCAC 3R .3030; relocations within the same county of existing health service facilities, beds or dialysis stations which do not involve an increase in the number of health service facility beds or stations; reallocation of beds or stations; Category A proposals submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; proposals submitted pursuant to 10 NCAC 3R .3050(a)(3) by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; and any other proposal not included in Categories A through H.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**.3010 MULTI-COUNTY GROUPINGS**

(a) Health Service Areas. The agency has assigned the counties of the state to the following health service areas for the purpose of scheduling applications for certificates of need:

**HEALTH SERVICE AREAS (HSA)**

I	II	III	IV	V	VI
County	County	County	County	County	County
Alexander	Alamance	Cabarrus	Chatham	Anson	Beaufort
Alleghany	Caswell	Gaston	Durham	Bladen	Bertie
Ashe	Davidson	Iredell	Franklin	Brunswick	Camden
Avery	Davie	Lincoln	Granville	Columbus	Carteret
Buncombe	Forsyth	Mecklenburg	Johnston	Cumberland	Chowan
Burke	Guilford	Rowan	Lee	Harnett	Craven
Caldwell	Randolph	Stanly	Orange	Hoke	Currituck
Catawba	Rockingham	Union	Person	Montgomery	Dare
Cherokee	Stokes		Vance	Moore	Duplin
Clay	Surry		Wake	New Hanover	Edgecombe
Cleveland	Yadkin		Warren	Pender	Gates
Graham				Richmond	Greene
Haywood				Robeson	Halifax
Henderson				Sampson	Hertford
Jackson				Scotland	Hyde
McDowell					Jones
Macon					Lenoir
Madison					Martin
Mitchell					Nash
Polk					Northampton
Rutherford					Onslow
Swain					Pamlico
Transylvania					Pasquotank

Watauga  
Wilkes  
Yancey

Perquimans  
Pitt  
Tyrrell  
Washington  
Wayne  
Wilson

(b) Mental Health Planning Areas. The agency has assigned the counties of the state to the following Mental Health Planning Areas for purposes of the State Medical Facilities Plan:

**MENTAL HEALTH PLANNING AREAS**

Area Number	Constituent Counties
1	<u>Jackson, Haywood, Macon, Cherokee, Clay, Graham, Swain</u>
2	<u>Buncombe, Madison, Mitchell, Yancey</u>
3	<u>Alleghany, Ashe, Avery, Watauga, Wilkes</u>
4	<u>Transylvania, Henderson</u>
5	<u>Caldwell, Burke, Alexander, McDowell</u>
6	<u>Rutherford, Polk</u>
7	<u>Cleveland</u>
8	<u>Gaston, Lincoln</u>
9	<u>Catawba</u>
10	<u>Mecklenburg</u>
11	<u>Rowan, Iredell, Davie</u>
12	<u>Stanly, Cabarrus, Union</u>
13	<u>Surry, Yadkin</u>
14	<u>Forsyth, Stokes</u>
15	<u>Rockingham</u>
16	<u>Guilford</u>
17	<u>Alamance, Caswell</u>
18	<u>Orange, Person, Chatham</u>
19	<u>Durham</u>
20	<u>Vance, Granville, Franklin, Warren</u>
21	<u>Davidson</u>
22	<u>Moore, Hoke, Richmond, Montgomery, Anson</u>
23	<u>Robeson, Bladen, Scotland, Columbus</u>
24	<u>Cumberland</u>
25	<u>Lee, Harnett</u>
26	<u>Johnston</u>
27	<u>Wake</u>
28	<u>Randolph</u>
29	<u>New Hanover, Brunswick, Pender</u>
30	<u>Onslow</u>
31	<u>Wayne</u>
32	<u>Wilson, Greene</u>
33	<u>Edgecombe, Nash</u>
34	<u>Halifax</u>
35	<u>Craven, Jones, Pamlico, Carteret</u>
36	<u>Lenoir</u>
37	<u>Pitt</u>
38	<u>Hertford, Bertie, Gates, Northampton</u>
39	<u>Beaufort, Washington, Tyrrell, Hyde, Martin</u>
40	<u>Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck</u>

**41 Duplin, Sampson**

(c) Mental Health Planning Regions. The agency has assigned the counties of the state to the following Mental Health Planning Regions for purposes of the State Medical Facilities Plan:

**MENTAL HEALTH PLANNING REGIONS (Area Number and Constituent Counties)**

**Western (W)**

- 1 - Jackson, Haywood, Macon, Cherokee, Clay, Graham, Swain
- 2 - Buncombe, Madison, Mitchell, Yancey
- 3 - Alleghany, Ashe, Avery, Watauga, Wilkes
- 4 - Transylvania, Henderson
- 5 - Caldwell, Burke, Alexander, McDowell
- 6 - Rutherford, Polk
- 7 - Cleveland
- 8 - Gaston, Lincoln
- 9 - Catawba
- 10 - Mecklenburg
- 11 - Rowan, Iredell, Davie
- 12 - Stanly, Cabarrus, Union

**North Central (NC)**

- 13 - Surry, Yadkin
- 14 - Forsyth, Stokes
- 15 - Rockingham
- 16 - Guilford
- 17 - Alamance, Caswell
- 18 - Orange, Person, Chatham
- 19 - Durham
- 20 - Vance, Granville, Franklin, Warren

**South Central (SC)**

- 21 - Davidson
- 22 - Moore, Hoke, Richmond, Montgomery, Anson
- 23 - Robeson, Bladen, Scotland, Columbus
- 24 - Cumberland
- 25 - Lee, Harnett
- 26 - Johnston
- 27 - Wake
- 28 - Randolph

**Eastern (E)**

- 29 - New Hanover, Brunswick, Pender
- 30 - Onslow
- 31 - Wayne
- 32 - Wilson, Greene
- 33 - Edgecombe, Nash
- 34 - Halifax
- 35 - Craven, Jones, Pamlico, Carteret
- 36 - Lenoir
- 37 - Pitt
- 38 - Hertford, Bertie, Gates, Northampton
- 39 - Beaufort, Washington, Tyrrell, Hyde, Martin

- 40 - Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck  
 41 - Duplin, Sampson

Authority G.S. 131E-176(25); 131E-177(l); 131E-183(l).

**.3020 CERTIFICATE OF NEED REVIEW SCHEDULE**

The agency has established the following schedule for review of categories and subcategories of facilities and services in ~~1995~~, 1996.

- (1) Category B. Subcategory Long-Term Nursing Facilities.

County	HSA	CON Beginning Review Date
Alexander	I	February 1, 1995- <u>April 1, 1996</u>
Caldwell	I	April 1, 1995
Graham	I	April 1, 1995
Transylvania	I	August 1, 1995
Randolph	II	August 1, 1995
Moore	V	May 1, 1995
Craven	VI	March 1, 1995
Camden	VI	September 1, 1995
Carteret	VI	September 1, 1995
Jones	VI	March 1, 1995
Hyde	VI	May 1, 1995
Gates	VI	December 1, 1995
Perquimans	VI	December 1, 1995
Henderson		<u>April 1, 1996</u>
McDowell		<u>August 1, 1996</u>
Rutherford		<u>March 1, 1996</u>
Watauga		<u>March 1, 1996</u>
Alamance		<u>August 1, 1996</u>
Lee		<u>September 1, 1996</u>
Wake		<u>May 1, 1996</u>
Brunswick		<u>December 1, 1996</u>
Cumberland		<u>December 1, 1996</u>
New Hanover		<u>September 1, 1996</u>
Pender		<u>May 1, 1996</u>
Beaufort		<u>December 1, 1996</u>
Onslow		<u>March 1, 1996</u>
Pitt		<u>May 1, 1996</u>

- (2) Category C.

- (a) Subcategory Intermediate Care Facilities for Mentally Retarded.

Mental Health Planning Areas (Constituent Counties)	HSA	CON Beginning Review Date
Buncombe, Madison, Mitchell, Yancey	I	October 1, 1995
Alleghany, Ashe, Avery, Watauga, Wilkes	I	October 1, 1995
Caldwell, Burke, Alexander, McDowell	I	October 1, 1995
Rutherford, Polk	I	October 1, 1995
Forsyth, Stokes	II	October 1, 1995
Guilford	II	October 1, 1995
Davidson	II	October 1, 1995
Gaston, Lincoln	III	October 1, 1995

**PROPOSED RULES**

Stanly, Cabarrus, Union	III	October 1, 1995
Orange, Person, Chatham	IV	November 1, 1995
Robeson, Bladen, Scotland, Columbus	V	November 1, 1995
Cumberland	V	November 1, 1995
New Hanover, Brunswick, Pender	V	November 1, 1995
Edgecombe, Nash	VI	November 1, 1995
Pitt	VI	November 1, 1995
Hertford, Bertie, Gates, Northampton	VI	November 1, 1995
Pasquotank, Chowan, Perquimans, Camden,	VI	November 1, 1995
Dare, Currituck		
2 (Buncombe, Madison, Mitchell, Yancey)		April 1, 1996
3 (Alleghany, Ashe, Avery, Watauga, Wilkes)		December 1, 1996
5 (Caldwell, Burke, Alexander, McDowell)		December 1, 1996
21 (Davidson)		October 1, 1996
10 (Mecklenburg)		April 1, 1996
12 (Stanley, Cabarrus, Union)		October 1, 1996
18 (Orange, Person, Chatham)		November 1, 1996
35 (Craven, Jones, Pamlico, Carteret)		July 1, 1996

(b) Subcategory Detox-Only Beds.

<u>Mental Health Planning Areas (Constituent Counties)</u>	<u>CON Beginning Review Date</u>
1 (Jackson, Haywood, Macon, Cherokee, Clay, Graham, Swain)	December 1, 1996
4 (Transylvania, Henderson)	December 1, 1996
5 (Caldwell, Burke, Alexander, McDowell)	December 1, 1996
6 (Rutherford, Polk)	December 1, 1996
8 (Gaston, Lincoln)	December 1, 1996
9 (Catawba)	December 1, 1996
11 (Rowan, Iredell, Davie)	December 1, 1996
13 (Surry, Yadkin)	June 1, 1996
14 (Forsyth, Stokes)	June 1, 1996
15 (Rockingham)	June 1, 1996
16 (Guilford)	June 1, 1996
17 (Alamance, Caswell)	June 1, 1996
18 (Orange, Person, Chatham)	June 1, 1996
20 (Vance, Granville, Franklin, Warren)	June 1, 1996
21 (Davidson)	November 1, 1996
23 (Robeson, Bladen, Scotland, Columbus)	November 1, 1996
24 (Cumberland)	November 1, 1996
25 (Lee, Harnett)	November 1, 1996
26 (Johnston)	November 1, 1996
27 (Wake)	November 1, 1996
28 (Randolph)	November 1, 1996
31 (Wayne)	May 1, 1996
32 (Wilson, Greene)	May 1, 1996
33 (Edgecombe, Nash)	May 1, 1996
34 (Halifax)	May 1, 1996
35 (Craven, Jones, Pamlico, Carteret)	May 1, 1996
36 (Lenoir)	May 1, 1996
38 (Hertford, Bertie, Gates, Northampton)	May 1, 1996
39 (Beaufort, Washington, Tyrrell, Hyde, Martin)	May 1, 1996
40 (Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck)	May 1, 1996
41 (Duplin, Sampson)	May 1, 1996

- (3) Category D. Subcategory End Stage Renal Disease Dialysis Stations. Dialysis station review in response to the "county need" or "facility need" methodologies shall be conducted under the provisions of 10 NCAC 3R .3032.

**PROPOSED RULES**

(4) Category E. Subcategory Ambulatory Surgical Facilities

County	HSA	CON Beginning Review Date
Cleveland	I	April 1, 1995

(4)(5) Category F. Subcategory Home Health Agencies or Offices.

County	HSA	CON Beginning Review Date
Watauga	I	October 1, 1995
Forsyth	II	June 1, 1995
Stokes	II	October 1, 1995
Orange	IV	November 1, 1995
Wake	IV	July 1, 1995
Bertie	VI	July 1, 1995
Onslow	VI	November 1, 1995
	I	October 1, 1996
	II	March 1, 1996
	III	June 1, 1996
	IV	November 1, 1996
	V	March 1, 1996
	VI	July 1, 1996

(5) Category G. Subcategory New Dialysis Stations as a result of "Adjusted Need Determinations."

County	CON Beginning Review Date
Carteret	March 1, 1996
Dare	March 1, 1996

- (6) Applications for certificates of need will be reviewed pursuant to the following review schedule, unless another schedule has been specified in subparagraphs one through five of this rule or it has been determined in 10 NCAC 3R .3030 that there is no need for the health service or facility proposed by the applicant.

CON Beginning Review Date	HSA	HSA
	I, II, III	IV, V, VI
January 1	--	--
February 1	A, B, G, I	G
March 1	— A, B, F, G, I	A, B, E, F, G, I
April 1	B, E, H, I	--
May 1	--	B, C, H, I
June 1	A, C, D, I, F	D
July 1	--	A, F, I
August 1	B, E, I	--
September 1	--	B, E, I
October 1	A, C, F, I	--

November 1	--	A, C, F, I
December 1	<u>C</u> , D, H, I	B, D, H, I

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**3030 FACILITY AND SERVICE NEED DETERMINATIONS**

Facility and service need determinations are shown in Items (1) - (8) of this Rule. The need determinations shall be revised continuously throughout 1995 1996 pursuant to 10 NCAC 3R .3040.

- (1) Category A. Acute Health Service Facilities. It is determined that there is no need for additional acute care beds and no reviews are scheduled.
- (2) Category B. Long-Term Nursing Facility Beds. (a) It is determined that the counties listed below need additional Long-Term Nursing Facility Beds as specified. There is no need for additional Long-Term Nursing Facility Beds in other counties and no other reviews are scheduled.

County	HSA	Number of Nursing Beds Needed
Alexander	I	20 30
Caldwell	I	60
Transylvania	I	30
Randolph	II	70
Moore	V	70
Craven	VI	50
Camden	VI	10
Carteret	VI	50
Henderson		90
McDowell		30
Rutherford		40
Watauga		20
Alamance		90
Lee		30
Wake		120
Brunswick		60
Cumberland		90
New Hanover		90
Pender		30
Beaufort		30
Onslow		40
Pitt		60

- (b) It is presumed that operation of a new long term nursing facility with a capacity of only 10 beds (as contrasted with an addition to an existing facility, or conversion of hospital or home for the aged beds) is not financially feasible under usual circumstances. Camden County lacks such facilities for expansion or conversion. Nevertheless, the need determination shown in this Plan provides an opportunity for development of this capacity within Camden County if special measures for assuring financial feasibility (such as philanthropic, religious, fraternal or public body financial assistance) can be demonstrated. Applications to develop Camden County's need determination in a contiguous county shall also be considered. Any such application shall confirm that admission priority shall be given to patients from Camden County, up to the number of beds in the need determination, and conditions attached to the award of any resulting certificate of need shall stipulate how this admission preference is to be assured. It is the intent of this provision that consideration of any proposed alternative site shall give due regard to the convenience of its use by citizens of Camden County, as applicable. Convenience includes the extent to which visits to patients are likely to be facilitated by usual patterns of citizen travel associated with obtaining goods and services and employment. Any county's bed surplus or deficit is deemed irrelevant to its

~~selection as an alternative location for the transfer of this capacity.~~

(3) Category C.

- (a) Psychiatric Facility Beds. It is determined that there is no need for additional psychiatric beds and no reviews are scheduled.
- (b) Intermediate Care Facilities Facility Beds for the Mentally Retarded. It is determined that the counties mental health planning areas listed below in the following table need additional Intermediate Care Facility beds for the Mentally Retarded ("ICF/MR beds"). ICF/MR as specified. The table identifies the number of new child and adult ICF/MR beds needed by each of the listed planning areas. These new ICF/MR beds shall only be used to convert existing five-bed ICF/MR beds into six-bed facilities. There is no need for new ICF/MR facilities or for ICF/MR facilities with more than six beds in these planning areas. There is no need for any additional ICF/MR Beds in any other counties mental health planning areas and no other reviews are scheduled, scheduled, except as provided in Rule 10 NCAC 3R .3040(a)(8).

Counties- Mental Health Planning Area (Constituent Counties)	HSA	Need Determination
	Child	Adult
<u>2</u> (Buncombe, Madison, Mitchell, Yancey)	I	6 1
<u>3</u> (Alleghany, Ashe, Avery, Watauga, Wilkes)	I	0
<u>5</u> (Caldwell, Burke, Alexander, McDowell)	I	6 1
Rutherford, Polk	I	6
Forsyth, Stokes	II	6
Guilford	II	0
<u>21</u> (Davidson)	II	12 0
Gaston, Lincoln	III	0
<u>10</u> (Mecklenburg)		1 0
<u>12</u> (Stanly, Cabarrus, Union)	III	0 1
<u>18</u> (Orange, Person, Chatham)	IV	0
<u>35</u> (Craven, Jones, Pamlico, Carteret)		2 0
Robeson, Bladen, Scotland, Columbus	V	0
Cumberland	V	0
New Hanover, Brunswick, Pender	V	6 0
Edgecombe, Nash	VI	0
Pitt	VI	0
Hertford, Bertie, Gates, Northampton	VI	0
Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck	VI	6 0

(c) Chemical Dependency Treatment Beds.

- (i) It is determined that there is no need for any additional chemical dependency treatment beds and no reviews are scheduled, other than detox-only beds for adults. The following table lists the mental health planning areas that need detox-only beds for adults and identifies the number of such beds needed in each planning area. There is no need for additional detox-only beds for adults in any other mental health planning areas. No other reviews for chemical dependency treatment beds are scheduled.

Mental Health Planning Areas (Constituent Counties)	Mental Health Planning Regions	Number of Detox-Only Beds Needed
<u>1</u> (Jackson, Haywood, Macon, Cherokee, Clay, Graham, Swain)	W	10
<u>4</u> (Transylvania, Henderson)	W	10
<u>5</u> (Caldwell, Burke, Alexander, McDowell)	W	1
<u>6</u> (Rutherford, Polk)	W	10
<u>8</u> (Gaston, Lincoln)	W	20
<u>9</u> (Catawba)	W	8

11	<u>(Rowan, Iredell, Davie)</u>	W	10
13	<u>(Surry, Yadkin)</u>	NC	2
14	<u>(Forsyth, Stokes)</u>	NC	10
15	<u>(Rockingham)</u>	NC	10
16	<u>(Guilford)</u>	NC	10
17	<u>(Alamance, Caswell)</u>	NC	6
18	<u>(Orange, Person, Chatham)</u>	NC	2
20	<u>(Vance, Granville, Franklin, Warren)</u>	NC	10
21	<u>(Davidson)</u>	SC	10
23	<u>(Robeson, Bladen, Scotland, Columbus)</u>	SC	5
24	<u>(Cumberland)</u>	SC	10
25	<u>(Lee, Harnett)</u>	SC	10
26	<u>(Johnston)</u>	SC	7
27	<u>(Wake)</u>	SC	10
28	<u>(Randolph)</u>	SC	4
31	<u>(Wayne)</u>	E	10
32	<u>(Wilson, Greene)</u>	E	10
33	<u>(Edgecombe, Nash)</u>	E	6
34	<u>(Halifax)</u>	E	10
35	<u>(Craven, Jones, Pamlico, Carteret)</u>	E	10
36	<u>(Lenoir)</u>	E	10
38	<u>(Hertford, Bertie, Gates, Northampton)</u>	E	4
39	<u>(Beaufort, Washington, Tyrrell, Hyde, Martin)</u>	E	5
40	<u>(Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck)</u>	E	10
41	<u>(Duplin, Sampson)</u>	E	10

- (ii) "Detox-only beds for adults" are chemical dependency treatment beds that are occupied exclusively by persons who are eighteen years of age or older who are experiencing physiological withdrawal from the effects of alcohol or other drugs.
- (iii) The county or counties which comprise each mental health planning area are listed in 10 NCAC 3R .3010(b).
- (iv) Detox-only beds for adults may be developed outside of the mental health planning area in which they are needed if:
- (A) The beds are developed in a contiguous mental health planning area that is within the same mental health planning region, as defined by 10 NCAC 3R .3010(c); and
- (B) The program board in the planning area in which the beds are needed and the program board in the planning area in which the beds are to be developed each adopt a resolution supporting the development of the beds in the contiguous planning area.
- (4) Category D. End Stage Renal Kidney Disease Treatment Facilities and Dialysis Stations Need for end-stage renal dialysis facilities or stations stations, except as otherwise provided in Paragraph (7) of this Rule, is determined as is provided in by 10 NCAC 3R .3032.
- (5) Category E.
- (a) Inpatient Rehabilitation Facility Beds.
- (i) Except as provided in Sub-item (ii) of this Item, If it is determined that there is no need for any additional inpatient rehabilitation facility beds and no reviews are scheduled.
- (ii) It is determined that there is a need for a demonstration project consisting of one inpatient rehabilitation unit containing no more than ten inpatient rehabilitation facility beds in Wilson County. The purpose of the project shall be to demonstrate whether such a unit is viable in terms of cost, utilization, and good medical practice; whether such a unit increases the utilization of inpatient rehabilitation services by patients who could benefit from such services; and whether such a unit improves patient outcomes. An application for a certificate of need for the demonstration project shall:
- (A) Conform to the requirements of the rules in 10 NCAC 3R .2800, with the exception of 10 NCAC 3R .2803(b);
- (B) Demonstrate that the project's rehabilitation services beds shall be developed solely by the conversion of existing licensed health service facility beds;
- (C) Demonstrate that the project's rehabilitation services beds shall be licensed, certified, and

- placed into operation within 12 months after the certificate of need is issued;
- (D) Contain the applicant's commitment to submit to the Certificate of Need Section three annual reports on the operation of the demonstration project. The annual report shall be postmarked on or before the thirtieth day following the anniversary of the licensing of the demonstration project and shall contain the following information:
- (I) The demonstration project's average per diem patient charges for the past year;
  - (II) The demonstration project's average per discharge patient charges for the past year;
  - (III) An accounting of the operational costs and patient revenues of the demonstration project for the past year;
  - (IV) The total number of patients served by the demonstration project during the past year;
  - (V) A list of the demonstration project's patient payor sources for the past year;
  - (VI) A description of the demonstration project's patient origin by county for the past year; and
  - (VII) An assessment of patient outcomes in the demonstration project during the past year.
- The target average annual occupancy rate for the demonstration project is the average of the average annual occupancy rates reported by or for all existing inpatient rehabilitation facilities or units in their 1996 license renewal applications. The demonstration project shall meet or exceed this target average annual occupancy rate during at least one period of 12 consecutive calendar months within five years after the demonstration project is licensed. If it does not, the demonstration project shall be terminated automatically and the beds shall revert to their prior health service facility bed category. Additionally, the rehabilitation facility beds shall automatically revert to their prior health service facility bed category if the applicant voluntarily terminates the demonstration project.
- (b) Ambulatory Surgery Operating Rooms. It is determined that ~~there is need for two additional ambulatory surgery operating rooms in Cleveland County.~~ There is no need for additional ambulatory surgery operating rooms in other counties and no other reviews are scheduled, except that a Rural Primary Care Hospital designated by the N.C. Office of Rural Health Services pursuant to Section 1820(f) of the Social Security Act may apply for a certificate of need to convert existing operating rooms for use as a freestanding ambulatory surgical facility.
- (6) Category F.
- (a) New Home Health Agencies or Offices. It is determined that the ~~counties~~ Health Service Areas identified in 10 NCAC 3R .3010 and listed below need additional Home Health Agencies or Offices as specified. ~~There is no need for additional Home Health Agencies or Offices in other counties and no other reviews are scheduled.~~

County	HSA	Number of Agencies or Offices Needed
Watauga	I	1
Forsyth	II	1
Stokes	II	1
Orange	IV	1
Wake	IV	3
Bertie	VI	1
Onslow	VI	1
	I	1
	II	1
	III	1
	IV	1
	V	1
	VI	1

- (b) New Hospice Home Care Programs. It is determined that there is no need for additional Hospice Home Care Programs and no reviews are scheduled.
- (c) New Hospice Inpatient Beds.
- (i) Single Counties. Single counties with a projected deficit of six or more beds are allocated beds based on the projected deficit. ~~It has been determined that Forsyth County has a need for fourteen Hospice~~

Inpatient Beds. There It is determined that there is no need for additional single county Hospice Inpatient Bed facilities and no other reviews are scheduled.

- (ii) Contiguous Counties. It has been is determined that any combination of two or more contiguous counties taken from the following list shall have a need for new hospice inpatient beds if the combined bed deficit for the grouping of contiguous counties totals six or more beds. Each county in a grouping of contiguous counties must have a deficit of at least one and no more than five beds. The need for the grouping of contiguous counties shall be the sum of the deficits in the individual counties. For purposes of this rule, "contiguous counties" shall mean a grouping of North Carolina counties which includes the county in which the new hospice inpatient facility is proposed to be located and any one or more of the North Carolina counties which have a common border with that county, even if the borders only touch at one point. No county may be included in a grouping of contiguous counties unless it is listed in the following table:

County	HSA	Hospice Inpatient Bed Deficit
Alexander	I	1
Ashe	I	1
<u>Avery</u>	I	1
<u>Haywood</u>		1
<u>Mitchell</u>		1
<u>Polk</u>		1
Rutherford	I	<u>2-3</u>
Transylvania	I	1
<u>Watauga</u>		1
<u>Wilkes</u>	I	1
Alamance	II	4
Davidson	II	2
Rockingham	II	<u>2-3</u>
Stokes	II	<u>1-2</u>
Surry	II	<u>2-4</u>
Cabarrus	III	<u>1-2</u>
Gaston	III	<u>3-4</u>
Iredell	III	1
Lincoln	III	1
Rowan	III	<u>2-1</u>
Stanly	III	1
Union	III	<u>1-2</u>
Chatham	IV	1
Durham	IV	<u>2-5</u>
Johnston	IV	1
<u>Lee</u>		1
Wake	IV	<u>5-4</u>
Bladen	V	1
Brunswick	V	1
Columbus	V	<u>2-3</u>
<u>Cumberland</u>	V	1
<u>Harnett</u>		1
Moore	V	<u>1-2</u>
Pender	V	1
Richmond	V	1
Robeson	V	1
Scotland	V	1
Bertie	VI	1
Craven	VI	1
Duplin	VI	2
Edgecombe	VI	1

Hertford	✓	1
Nash	✓	1
Northampton	✓	1
Onslow	✓	1
Pitt	✓	1
Wilson	✓	1

- (7) Category G. Psychiatric/Substance Abuse Demonstration Project. Kidney Disease Treatment Facilities and Dialysis Stations. It is determined that Carteret and Dare Counties have a need for additional dialysis stations that is not revealed by the standard need methodology in 10 NCAC 3R .3032 because of conditions unique to these two counties. The dialysis station need in Carteret and Dare Counties is shown in the following table:

<u>County</u>	<u>Number of New Dialysis Stations Needed</u>
Carteret	6
Dare	4

- (a) It is determined that no more than fifty beds, in a free standing facility, are needed for a demonstration of the effectiveness and economy of the treatment, in the same facility and therapeutic milieu, of persons with addictions and persons with psychiatric disorders such as are evidenced by compulsive behaviors.
- (b) Such a demonstration shall incorporate the concept of closed groups; that is, "classes" of patients entering and leaving treatment concurrently, so as to facilitate the recovery inducing aspects of the interaction of members of therapeutic groups. The treatment proposed to be offered in the demonstration also shall integrate a cognitively based therapeutic program with a 12 step recovery model, a treatment modality based on the method of treatment of Alcoholics Anonymous which uses twelve fundamental principles as guides to the process of personal change that is required to achieve sobriety.
- (c) Persons proposing to meet this need must provide, in their applications for a certificate of need, evidence of their experience, ability and commitment not only to provide services as described above, but to demonstrate the applicability of these and other innovations to the broader therapeutic community. Such evidence shall include:
- (i) A written agreement with a university affiliated professional to design and oversee periodic or continuing determinations of the effectiveness of treatment provided in the demonstration, and the publication of the results.
- (ii) A written agreement with a university affiliated professional from an academic medical center that establishes the willingness and intent of such professional to engage in a clinical relationship with the demonstration facility.
- (iii) A written statement that at least ten percent of the patients of the demonstration facility will be indigent persons, who will be provided free care.
- (iv) A commitment to provide to the Certificate of Need Section annual reports of the average per diem and per discharge patient charges, the total number of patients served, and the number of free care patients. Such reports will be due thirty days following the first, second and third anniversary dates of the licensure of the facility.
- (d) The number of beds for which a certificate of need is granted will not be counted in the State Medical Facility Plan's inventory of psychiatric or substance abuse beds in the mental health area or region in which the facility is to be located, or in any other area or region of the state.
- (e) Pursuant to the provisions of 10 NCAC 14K. 0216, the Director of the Division of Facility Services shall waive any licensure rule which requires that substance abuse and psychiatric patients be treated in separate accommodations, and from all other rules which are inconsistent with the unique character of the demonstration facility, if the applicant for, or holder of, a certificate of need issued pursuant to this rule demonstrates that the waiver will not affect the health, safety, or welfare of the patients.
- (8) Category H.
- (a) Open heart surgery services. It is determined that there is no need for additional open heart surgery services

- and no reviews are scheduled; except that a health service facility that currently provides these services may apply for a certificate of need to expand its existing services at its existing site or location to meet specific needs if utilization of the health service facility's existing open heart surgery services exceeds 80% of capacity.
- (b) Heart-Lung Bypass Machines. It is determined that there is no need for additional heart-lung bypass machines and no reviews are scheduled; except that a health service facility that currently provides open heart surgery services may apply for a certificate of need to acquire additional heart-lung bypass machinery at its existing site or location if the existing heart-lung machinery used by the health service facility is utilized at or above 80% of capacity.
- (c) Cardiac Angioplasty Equipment. It is determined that there is no need for additional cardiac angioplasty equipment and no reviews are scheduled; except that a health service facility that currently provides cardiac angioplasty services may apply for a certificate of need to acquire additional cardiac angioplasty equipment at its existing site or location if utilization of cardiac angioplasty equipment used by the health service facility exceeds 80% of capacity.
- (d) Cardiac Catheterization Equipment. It is determined that there is no need for additional fixed or mobile cardiac catheterization equipment and no reviews are scheduled; except that a health service facility that currently provides cardiac catheterization services may apply for a certificate of need to acquire additional cardiac catheterization equipment at its existing site or location if utilization of cardiac catheterization equipment used by the health service facility exceeds 80% of capacity. Mobile cardiac catheterization equipment and services shall only be approved for development on hospital sites.
- (e) Solid organ transplant services shall be developed and offered only by academic medical center teaching hospitals as designated in 10 NCAC 3R .3050(a)(3). It is determined that there is no need for new solid organ transplant services and no reviews are scheduled.
- (f) Bone Marrow Transplantation Services. It is determined that allogeneic bone marrow transplantation services shall be developed and offered only by academic medical center teaching hospitals as designated in 10 NCAC 3R .3050(a)(3). It is determined that there is no need for additional allogeneic or autologous bone marrow transplantation services and no reviews are scheduled.
- (g) Gamma Knife Equipment. Knives. It is determined that there is no need for gamma knife equipment knives and no reviews are scheduled.
- (h) Positron Emission Tomography Scanner. Scanners. It is determined that there is no need for additional positron emission tomography scanners for purposes other than research and no reviews are scheduled.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

### .3032 DIALYSIS STATION NEED DETERMINATION

(a) The Medical Facilities Planning Section (MFPS) shall determine need for new dialysis stations and facilities two times each calendar year, and shall make a report of such determinations available to all who request it. This report shall be called the North Carolina Semiannual Dialysis Report (SDR). Data to be used for such determinations, and their sources, are as follows:

- (1) Numbers of dialysis patients, by type, county and facility, from the Southeastern Kidney Council, Inc. (SEKC) and the Mid-Atlantic Renal Coalition, Inc. as of December 31, 1995 for the March SDR and as of June 30, 1996 for the September SDR.
- (2) Certificate of need decisions, decisions appealed, appeals settled, and awards, from the Certificate of Need Section, DFS.
- (3) Facilities certified for participation in Medicare, from the Certification Section, DFS.
- (4) Need determinations for which certificate of need decisions have not been made, from MFPS records.

Need determinations in this report shall be an integral part of the State Medical Facilities Plan, as provided in G.S. 131E-183.

- (b) Need for new dialysis stations and facilities shall be determined as follows:

- (1) County Need
  - (A) The average annual rate (%) of change in total number of dialysis patients resident in each county from the end of 1990 1991 to the end of 1994 1995 is multiplied by the county's 1994 1995 year end total number of patients in the SDR, and the product is added to each county's most recent total number of patients reported in the SDR. The sum is the county's projected total 1995 1996 patients.
- (B) The percent of each county's total patients who were home dialysis patients at the end of 1994 1995 is multiplied by the county's projected total 1995 1996 patients, and the product is subtracted from the county's projected total 1995 1996 patients. The remainder is the county's projected 1995 1996 in-center dialysis patients.
- (C) The projected number of each county's 1995 1996 in-center patients is divided by 3.2. The quotient is the

- projection of the county's 1995 1996 in-center dialysis stations.
- (D) From each county's projected number of 1995 1996 in-center stations is subtracted the county's number of stations certified for Medicare, CON-approved and awaiting certification, awaiting resolution of CON appeals, and the number represented by need determinations in previous State Medical Facilities Plans or Semiannual Dialysis Reports for which CON decisions have not been made. The remainder is the county's 1995 1996 station need projection.
- (E) If a county's 1995 1996 station need projection is ten or greater and the SDR shows that utilization of each dialysis facility in the county is 80% or greater, the 1995 1996 county station need determination is the same as the 1995 1996 station need projection. If a county's 1995 1996 station need projection is less than 10 ten, or the utilization of any dialysis facility in the county is less than 80%, the county's 1995 1996 station need determination is zero.
- (2) Facility Need
- A dialysis facility located in a county whose unmet need for which the result of the County Need methodology is zero in the reference Semiannual Dialysis Report (SDR) is less than ten stations is determined to need additional stations to the extent that:
- (A) Its utilization, reported in the SDR, is greater than 3.2 patients per station.
- (B) Such need, calculated as follows, is reported in an application for a certificate of need:
- (i) The facility's number of in-center hemodialysis dialysis patients reported in the previous SDR (SDR<sub>1</sub>) is subtracted from the number of in-center hemodialysis dialysis patients reported in the current SDR (SDR<sub>2</sub>). The difference is multiplied by 2 to project the net in-center change for 1 year. Divide the projected net in-center change for the year by the number of in-center patients from SDR<sub>1</sub> to determine the projected annual growth rate.
- (ii) The quotient from Subpart (b)(2)(B)(i) of this Rule is divided by 12.
- (iii) The quotient from Subpart (b)(2)(B)(ii) of this Rule is multiplied by the number of months from the most recent month reported in the current SDR until the end of calendar 1995. 1996.
- (iv) The product from Subpart (b)(2)(B)(iii) of this Rule is multiplied by the number of the facility's in-center patients reported in the current SDR and that product is added to such reported number of in-center patients.
- (v) The sum from Subpart (b)(2)(B)(iv) of this Rule is divided by 3.2, and from the quotient is subtracted the facility's current number of certified and pending stations as recorded in the current SDR. The remainder is the number of stations needed.
- (C) The facility may apply to expand to meet the need established in Subpart (b)(2)(B)(v) of this Rule, up to a maximum of ten stations.
- (c) The schedule for publication of the North Carolina Semiannual Dialysis Report (SDR) and for receipt of certificate of need applications based on each issue of this report in 1995 1996 shall be as follows:

Date for Period Ending	Receipt of SEKC Report	Publication of SDR	Receipt of CON Applications	Beginning Review Dates
Dec. 31, 1994	Feb. 28, 1995	March 20, 1995	May 16, 1995	June 1, 1995
June 30, 1995	Aug. 31, 1995	Sept. 20, 1995	Nov. 15, 1995	Dec. 1, 1995
Dec. 31, 1995	Feb. 28, 1996	March 20, 1996	May 16, 1996	June 1, 1996
June 30, 1996	Aug. 31, 1996	Sept. 20, 1996	Nov. 15, 1996	Dec. 1, 1996

- (d) An application for a certificate of need pursuant to this Rule shall be accepted only if it demonstrates a need by utilizing one of the methods of determining need outlined in this Rule.
- (e) An application for a new End Stage Renal Disease facility facility, other than applications for dialysis stations to be developed in Dare and Carteret Counties pursuant to NCAC 3R .3030 (7), shall not be approved unless it documents the need for at least 10 stations based on utilization of 3.2 patients per station per week.
- (f) Home patients will not be included in determination of need for new stations.

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

.3040 REALLOCATIONS AND ADJUSTMENTS

**(a) REALLOCATIONS.**

- (1) Reallocations shall be made only to the extent that 10 NCAC 3R .3030 determines that a need exists after the inventory is revised and the need determination is recalculated.
- (2) Beds or services which are reallocated once in accordance with this Rule shall not be reallocated again. Rather, the Medical Facilities Planning Section shall make any necessary changes in the next published amendment to 10 NCAC 3R .3030.
- (3) Dialysis stations that are withdrawn, relinquished, not applied for or decertified shall not be reallocated. Instead, any necessary redetermination of need shall be made in the next scheduled publication of the Semiannual Dialysis Report.
- (3) (4) Appeals of Certificate of Need Decisions on Applications. Need determinations of beds or services for which the CON Section decision has been appealed shall not be reallocated until the appeal is resolved.
  - (A) Appeals Resolved Prior to September 17: If an appeal is resolved in the calendar year prior to September 17, the beds or services shall not be reallocated by the CON Section; rather the Medical Facilities Planning Section shall make the necessary changes in the next amendment to 10 NCAC 3R .3030.
  - (B) Appeals Resolved On Or After September 17: If the appeal is resolved on or after September 17 in the calendar year, the beds or services shall be made available for a review period to be determined by the CON Section, but beginning no earlier than 60 days from the date that the appeal is resolved. Notice shall be given by the Certificate of Need Section no less than 45 days prior to the due date for receipt of new applications.
- (4) Dialysis stations that are withdrawn, relinquished, not applied for or decertified shall not be reallocated. Instead, any necessary redetermination of need shall be made in the next scheduled publication of the Semiannual Dialysis Report.
- (5) Withdrawals and Relinquishments. Except for dialysis stations, A need determination for which a certificate of need is issued, but is subsequently withdrawn or relinquished, is available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from:
  - (A) the last date on which an appeal of the notice of intent to withdraw the certificate could be filed if no appeal is filed,
  - (B) the date on which an appeal of the withdrawal is finally resolved against the holder, or
  - (C) the date that the Certificate of Need Section receives from the holder of the certificate of need notice that the certificate has been voluntarily relinquished.Notice of the scheduled review period for the reallocated services or beds shall be given no less than 45 days prior to the due date for submittal of the new applications.
- (6) Need Determinations for which No Applications are Received:
  - (A) Services or Beds with Scheduled Review in the Calendar Year on or Before October 1: Need determinations, or portions of such need, for services or beds in this category include long-term nursing care beds, home health agencies or offices, hospice home care programs, hospice inpatient beds, and beds in intermediate care facilities for the mentally retarded (ICF/MR) with the exception of ICF/MR need determinations with a scheduled review that begins after October 1. The Certificate of Need Section shall not reallocate the services or beds in this category for which no applications were received, because the Medical Facilities Planning Section will have sufficient time to make any necessary changes in the determinations of need for these services or beds in the next annual amendment to 10 NCAC 3R .3030.
  - (B) Services or Beds with Scheduled Review in the Calendar Year After October 1: Need determinations for services or beds in this category include acute care beds, psychiatric beds, substance abuse beds, ICF/MR beds, bone marrow transplantation services, burn intensive care services, neonatal intensive care services, open heart surgery services, solid organ transplantation services, air ambulance equipment, cardiac angioplasty equipment, cardiac catheterization equipment, heart-lung bypass machine, machines, gamma knife, knives, lithotriptors, magnetic resonance imaging scanner, scanners, positron emission tomography scanners, major medical equipment as defined in G.S. 131E-176(14f), diagnostic centers and oncology treatment centers for which review commences after October 1. A need determination in this category for which no application has been received by the last due date for submittal of applications shall be available to be applied for in the second Category I review period in the next calendar year for the applicable HSA. Notice of the scheduled review period for the reallocated beds or services shall be given by the Certificate of Need Section no less than 45 days prior to the due date for submittal of new applications.
- (7) Need Determinations not Awarded because Application Disapproved:
  - (A) Disapproval in the Calendar Year prior to September 17: Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section before September 17, shall not be reallocated by the Certificate of Need Section. Instead the Medical Facilities Planning Section

- shall make the necessary changes in the next annual amendment to 10 NCAC 3R .3030 if no appeal is filed.
- (B) Disapproval in the Calendar Year on or After September 17: Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section on or after September 17, shall be reallocated by the Certificate of Need ~~Section~~ Section except for dialysis stations. A need in this category shall be available for a review period to be determined by the Certificate of Need Section but beginning no earlier than 95 days from the date the application was disapproved, if no appeal is filed. Notice of the scheduled review period for the reallocation shall be mailed no less than 80 days prior to the due date for submittal of the new applications.
- (8) Reallocation of Delicensed and Decertified ICF/MR Beds. If an ICF/MR facility's license and Medicaid certification are relinquished or revoked, the ICF/MR beds in the facility shall be reallocated by the Department of Human Resources, Division of Facility Services, Medical Facilities Planning Section pursuant to the provisions of the following sub-parts. The reallocated beds shall only be used to convert five-bed ICF/MR facilities into six-bed facilities.
- (A) If the number of five-bed ICF/MR facilities in the mental health planning region in which the beds are located equals or exceeds the number of reallocated beds, the beds shall be reallocated solely within the planning region after considering the recommendation of the Regional Team of Developmental Disabilities Services Directors.
- (B) If the number of five-bed ICF/MR facilities in the mental health planning region in which the beds are located is less than the number of reallocated beds, the Medical Facilities Planning Section shall reallocate the excess beds to other planning regions after considering the recommendation of the Developmental Disabilities Section in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The Medical Facilities Planning Section shall then allocate the beds among the planning areas within those planning regions after considering the recommendation of the appropriate Regional Teams of Developmental Disabilities Services Directors.
- (C) The Department of Human Resources, Division of Facility Services, Certificate of Need Section shall schedule reviews of applications for these beds pursuant to Subpart (a)(5) of this Rule.
- (b) CHANGES IN NEED DETERMINATIONS.
- (1) The need determinations in 10 NCAC 3R .3030 and .3032 shall be revised continuously throughout ~~1995~~ the calendar year to reflect all changes in the inventories of:
- (A) the health services listed at G.S. 131E-176 (16)f;
- (B) health service facilities;
- (C) health service facility beds;
- (D) dialysis stations;
- (E) the equipment listed at G.S. 131E-176 (16)f1; and
- (F) mobile medical equipment.
- as those changes are reported to the Medical Facilities Planning Section. However, need determinations in 10 NCAC 3R .3030 or .3032 shall not be reduced if the relevant inventory is adjusted upward 30 days or less prior to the first day of the applicable review period.
- (2) Inventories shall be updated to reflect:
- (A) decertification of home health agencies or ~~effees offices~~, intermediate care facilities for the mentally retarded, and dialysis stations;
- (B) delicensure of health service facilities and health service facility beds;
- (C) demolition, destruction, or decommissioning of equipment as listed at G.S. 131E-176(16)f1 and s;
- (D) elimination or reduction of a health service as listed at G.S. 131E-176(16)f;
- (E) psychiatric beds licensed pursuant to G.S. 131E-184(c);
- (F) certificates of need awarded, relinquished, or withdrawn, subsequent to the preparation of the inventories in the State Medical Facilities Plan; and
- (G) corrections of errors in the inventory as reported to the Medical Facilities Planning Section.
- (3) Any person who is interested in applying for a new institutional health service for which a need determination is made in 10 NCAC 3R .3030 or .3032 may obtain information about updated inventories and need determinations from the Medical Facilities Planning Section.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

### .3050 POLICIES

#### (a) ACUTE CARE FACILITIES AND SERVICES

- (1) Use of Licensed Bed Capacity Data for Planning Purposes. For planning purposes the number of licensed beds

- shall be determined by the Division of Facility Services in accordance with standards found in 10 NCAC 3C .1510 - Bed Capacity.
- (2) Utilization of Acute Care Hospital Bed Capacity. Conversion of underutilized hospital space to other needed purposes shall be considered an alternative to new construction. Hospitals falling below utilization targets in 10 NCAC 3R .3050(a)(4) are assumed to have underutilized space. Any such hospital proposing new construction must clearly demonstrate that it is more cost-effective than conversion of existing space.
- (3) Exemption from Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects. Projects for which certificates of need are sought by academic medical center teaching hospitals may qualify for exemption from provisions of 10 NCAC 3R .3030. The State Medical Facilities Planning Section shall designate as an Academic Medical Center Teaching Hospital any facility whose application for such designation demonstrates the following characteristics of the hospital:
- (A) Exemption from Plan provisions for certain Academic Medical Center Teaching Hospital projects that serve as a primary teaching site for a school of medicine and at least one other health professional school, providing undergraduate, graduate and postgraduate education.
- (B) Exemption from provisions of 10 NCAC 3R .3030 shall be granted to projects submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990 and houses extensive basic medical science and clinical research programs, patients and equipment, and which projects comply with one of the following conditions:
- (i) Necessary to complement a specified and approved expansion of the number or types of students, residents or faculty, as certified by the head of the relevant associated professional school; or
- (ii) Necessary to accommodate patients, staff or equipment for a specified and approved expansion of research activities, as certified by the head of the entity sponsoring the research; or
- (iii) Necessary to accommodate changes in requirements of specialty education accrediting bodies, as evidenced by copies of documents issued by such bodies.
- (C) Serves the treatment needs of patients from a broad geographic area through multiple medical specialties.
- (4) Reconversion to Acute Care. Facilities redistributing beds from acute care bed capacity to rehabilitation or psychiatric use shall obtain a certificate of need to convert this capacity back to acute care. Application for such reconversion to acute care of beds converted to psychiatry or rehabilitation shall be evaluated against the hospital's utilization in relation to target occupancies used in determining need shown in 10 NCAC 3R .3030 without regard to the acute care bed need shown in the Rule. These target occupancies are:

Licensed Bed Capacity	Percent Occupancy
1 - 49	65
50 - 99	70
100 - 199	75
200 - 699	80
700 +	81.5

- (5) Multi-Specialty Ambulatory Surgery. After applying other required criteria, when superiority among two or more competing ambulatory surgical facility certificate of need applications is uncertain, favorable consideration shall be given to "multi-specialty programs" over "specialty programs" in areas where need is demonstrated in 10 NCAC 3R .3030. A multi-specialty ambulatory surgical program means a program providing services in at least three of the following areas; gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, orthopedics, urology, and oral surgery. An ambulatory surgical facility shall provide at least two designated operating rooms with general anesthesia capabilities, and at least one designated recovery room.
- (6) Distribution of Inpatient Rehabilitation Beds. After applying other required criteria, when superiority among two or more competing rehabilitation facility certificate of need applications is uncertain, favorable consideration shall be given to proposals that make rehabilitation services more accessible to patients and their families or are part of a comprehensive regional rehabilitation network.

**(b) LONG-TERM CARE FACILITIES AND SERVICES.**

- (1) Provision of Hospital-Based Long-Term Nursing Care. A certificate of need may be issued to a hospital which is licensed under G.S. 131E, Article 5, and which meets the conditions set forth below and other relevant rules, to convert up to ten beds from its licensed acute care bed capacity for use as hospital-based long-term nursing care beds without regard to determinations of need in 10 NCAC 3R .3030 if the hospital:
- (A) is located in a county which was designated as non-metropolitan by the U. S. Office of Management and Budget on January 1, 1995; 1996; and
- (B) on January 1, 1995; 1996, had a licensed acute care bed capacity of 150 beds or less.

The certificate of need shall remain in force as long as the Department of Human Resources determines that the hospital is meeting the conditions outlined in this Rule.

"Hospital-based long-term nursing care" is defined as long-term nursing care provided to a patient who has been directly discharged from an acute care bed and cannot be immediately placed in a licensed nursing facility because of the unavailability of a bed appropriate for the individual's needs. Determination of the patient's need for hospital-based long-term nursing care shall be made in accordance with criteria and procedures for determining need for long-term nursing care administered by the Division of Medical Assistance and the Medicare program. Beds developed under this Rule are intended to provide placement for residents only when placement in other long-term care beds is unavailable in the geographic area. Hospitals which develop beds under this Rule shall discharge patients to other nursing facilities with available beds in the geographic area as soon as possible where appropriate and permissible under applicable law. Necessary documentation including copies of physician referral forms (FL 2) on all patients in hospital-based nursing units shall be made available for review upon request by duly authorized representatives of licensed nursing facilities.

For purposes of this Rule, beds in hospital-based long-term nursing care shall be certified as a "distinct part" as defined by the Health Care Financing Administration. Beds in a "distinct part" shall be converted from the existing licensed bed capacity of the hospital and shall not be reconverted to any other category or type of bed without a certificate of need.

An application for a certificate of need for reconvert ing beds to acute care shall be evaluated against the hospital's service needs utilizing target occupancies shown in 10 NCAC 3R .3050(a)(4), without regard to the acute care bed need shown in 10 NCAC 3R .3030. A certificate of need issued for a hospital-based long-term nursing care unit shall remain in force as long as the following conditions are met:

- (i) the beds shall be certified for participation in the Title XVIII (Medicare) and Title XIX (Medicaid) Programs;
- (ii) the hospital discharges residents to other nursing facilities in the geographic area with available beds when such discharge is appropriate and permissible under applicable law;
- (iii) patients admitted shall have been acutely ill inpatients of an acute hospital or its satellites immediately preceding placement in the unit.

The granting of beds for hospital-based long-term nursing care shall not allow a hospital to convert additional beds without first obtaining a certificate of need. Where any hospital, or the parent corporation or entity of such hospital, any subsidiary corporation or entity of such hospital, or any corporation or entity related to or affiliated with such hospital by common ownership, control or management:

- (I) applies for and receives a certificate of need for long-term care bed need determinations in 10 NCAC 3R .3030; or
- (II) currently has nursing home beds licensed as a part of the hospital under G.S. 131E, Article 5; or
- (III) currently operates long-term care beds under the Federal Swing Bed Program (P.L. 96-499), such hospital shall not be eligible to apply for a certificate of need for hospital-based long-term care nursing beds under this Rule. Hospitals designated by the State of North Carolina as Rural Primary Care Hospitals pursuant to section 1820(f) of the Social Security Act, as amended, which have not been allocated long-term care beds under provisions of G.S. 131E-175 through 131E-190 may apply to develop beds under this Rule. However, such hospitals shall not develop long-term care beds both to meet needs determined in 10 NCAC 3R .3030 and this Rule. Beds certified as a "distinct part" under this Rule shall be counted in the inventory of existing long-term care beds and used in the calculation of unmet long-term care bed need for the general population of a planning area. Applications for certificates of need pursuant to this Rule shall be accepted only for the March 1 review cycle. Beds awarded under this Rule shall be deducted from need determinations for the county as shown in 10 NCAC 3R .3030. Continuation of this Rule shall be reviewed and approved by the Department of Human Resources annually. Certificates of need issued under policies analogous to this Rule in State Medical Facilities Plans subsequent to the 1986 Plan are automatically amended to conform with the provisions of this Rule at the effective date of this Rule. The Department of Human Resources shall monitor this program and ensure that patients affected by this Rule are receiving appropriate services, and that conditions under which the certificate of need was granted are being met.

(2) Plan Exemption for Continuing Care Facilities.

(A) Qualified continuing care facilities may include from the outset, or add or convert bed capacity for long-term nursing care without regard to the bed need shown in 10 NCAC 3R .3030. To qualify for such exemption, applications for certificates of need shall show that the proposed long-term nursing bed capacity:

- (i) Will only be developed concurrently with, or subsequent to construction on the same site, of facilities for both of the following levels of care:

- (I) independent living accommodations (apartments and homes) for persons who are able to carry out normal activities of daily living without assistance; such accommodations may be in the form of apartments, flats, houses, cottages, and rooms within a suitable structure;
  - (II) domiciliary care (home for the aged) beds for use by persons who, because of age or disability require some personal services, incidental medical services, and room and board to assure their safety and comfort.
- (ii) Will be used exclusively to meet the needs of persons with whom the facility has continuing care contracts (in compliance with the Department of Insurance statutes and rules) who have lived in a non-nursing unit of the continuing care facility for a period of at least 30 days. Exceptions shall be allowed when one spouse or sibling is admitted to the nursing unit at the time the other spouse or sibling moves into a non-nursing unit, or when the medical condition requiring nursing care was not known to exist or be imminent when the individual became a party to the continuing care contract. Financial consideration paid by persons purchasing a continuing care contract shall be equitable between persons entering at the "independent living" and "domiciliary" levels of care.
  - (iii) Reflects the number of beds required to meet the current or projected needs of residents with whom the facility has an agreement to provide continuing care, after making use of all feasible alternatives to institutional nursing care.
  - (iv) Will not be certified for participation in the Medicaid program.
- (B) One half of the long-term nursing beds developed under this exemption shall be excluded from the inventory used to project bed need for the general population. Certificates of need issued under policies analogous to this Rule in State Medical Facilities Plans subsequent to the 1985 SMFP are automatically amended to conform with the provisions of this Rule at the effective date of this Rule. Certificates of need awarded pursuant to the provisions of Chapter 920, Session Laws 1983, or Chapter 445, Session Laws 1985 shall not be amended.
- (3) Development of Home Health Services. After applying other required criteria, when superiority among two or more competing home health agency or office certificate of need applications is uncertain, favorable consideration shall be given to proposals which:
- (A) provide an expanded scope of services (including nursing, physical therapy, speech therapy, and home health aide service);
  - (B) provide the widest range of treatments within a given service; and
  - (C) have the ability to offer services on a seven days per week basis as required to meet patient needs; and
  - (D) provide specialized services to address the needs of at least one of the following groups: nursing home patients in transition to the community, HIV/AIDS patients, Alzheimer's Disease/senile dementia patients, or underserved patients in rural counties.
- (4) Need Determination Upon Termination of County's Sole Home Health Agency. When a home health agency's board of directors, or in the case of a public agency, the responsible public body, votes to discontinue the agency's provision of home health services; and
- (A) the agency is the only home health agency with an office physically located in the county; and
  - (B) the agency is not being lawfully transferred to another entity; need for a new home health agency or office in the county is thereby established through this Rule.
- Following receipt of written notice of such decision from the home health agency's chief administrative officer, the Certificate of Need Section shall give public notice of the need for one home health agency or office in the county, and the dates of the review of applications to meet the need. Such notice shall be given no less than 45 days prior to the final date for receipt of applications in a newspaper serving the county and to home health agencies located outside the county reporting serving county patients in the most recent licensure applications on file.
- (5) Availability of Dialysis Care. After applying other required criteria, when superiority among two or more competing dialysis facility or station certificate of need applications is uncertain, favorable consideration shall be given to applicants proposing to provide or arrange for:
- (A) home training and backup for patients suitable for home dialysis in the ESRD dialysis facility or in a facility that is a reasonable distance from the patient's residence;
  - (B) ESRD dialysis service availability at times that do not interfere with ESRD patients' work schedules;
  - (C) services in rural, remote areas.
- (6) Determination of Need for Additional Nursing Beds in Single Provider Counties. When a long-term care facility with fewer than 80 nursing care beds is the only nursing care facility within a county, it may apply for a certificate of need for additional nursing beds in order to bring the minimum number of beds available within the county to

no more than 80 nursing beds without regard to the nursing bed need determination for that county as listed in 10 NCAC 3R .3030.

(c) MENTAL HEALTH FACILITIES AND SERVICES.

- (1) Appropriate Provision of Care. Hospitalization shall be considered the most restrictive form of therapeutic intervention or treatment and shall be used only when this level of 24-hour care and supervision is required to meet the patient's health care needs.
- (2) Linkages Between Treatment Settings. Anyone applying for a certificate of need for psychiatric, ICF/MR or substance abuse beds shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services, relative to their endorsement of the project and involvement in the development of a client admission and discharge agreement.
- (3) Transfer of Beds from State Psychiatric Hospitals to Community Facilities. Beds in the State psychiatric hospitals used to serve short-term psychiatric patients may be relocated to community facilities. However, before beds are transferred out of the State psychiatric hospitals, appropriate services and programs shall be available in the community. The process of transferring beds shall not result in a net change in the number of psychiatric beds available, but rather in the location of beds counted in the existing inventory. State hospital beds which are relocated to community facilities shall be closed within ninety days following the date the transferred beds become operational in the community. Facilities proposing to operate transferred beds shall commit to serve the type of short-term patients normally placed at the State psychiatric hospitals. To help ensure that relocated beds will serve those persons who would have been served by the State psychiatric hospitals, a proposal to transfer beds from a State hospital shall include a written memorandum of agreement between the area MH/DD/SAS program serving the county where the beds are to be located, the Secretary of Human Resources, and the person submitting the proposal.
- (4) Inpatient Psychiatric Services for Children and Adolescents. Inpatient psychiatric treatment of children and adolescents which is more extensive than stabilization shall occur in units which are separate and distinct from both adult psychiatric units and general pediatric units. In order to maximize efficiency and ensure the availability of a continuum of care, psychiatric beds for children and adolescents shall be developed in conjunction with outpatient treatment programs.
- (5) Involuntarily Committed Patients. All certificate of need applications for psychiatric beds shall indicate the proponents' willingness to be designated to serve involuntarily committed patients.
- (6) Substance Abuse Programs to Treat Adolescents. Adolescents shall receive substance abuse treatment services that are distinct from services provided to adults.
- (7) Determination of Intermediate Care Bed Need for Mentally Retarded/ Developmentally Disabled Persons. After applying other required criteria, when superiority among two or more competing ICF/MR certificate of need applications is uncertain, favorable consideration shall be given to counties that do not have ICF/MR group homes when such counties are part of a multi-county area for which a need is shown in 10 NCAC 3R .3030.
- (8) Transfer of Beds from State Mental Retardation Centers. Facilities proposing to transfer ICF/MR beds from State mental retardation centers to communities shall demonstrate that they are committed to serving the same type of residents normally served in the State mental retardation centers. To ensure that relocated beds will serve those persons, any certificate of need application proposing to transfer beds under this rule must meet the requirements of Chapter 858 of the 1983 Session Laws. The application for transferred beds shall include a written agreement by the applicant with the following representatives which outlines the operational aspects of the bed transfers: Director of the Area MH/DD/SAS Program serving the county where the program is to be located; the Director of the applicable State Mental Retardation Center; the Chief of Developmental Disability Services in the DMH/DD/SAS; and the Secretary of the Department of Human Resources.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

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**TITLE 15A - DEPARTMENT OF ENVIRONMENT,  
HEALTH, AND NATURAL RESOURCES**

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend rules cited as 15A NCAC 2D .0518, .0524, .0530, .0902, .0909, .0954, .1110 - .1111, .1402 - .1403; 2Q .0104, .0107 - April 1, 1997. 15A NCAC 2Q .0102, .0507, .0512, .0514 - .0515 and .0517 - July 1, 1997; and to repeal 15A NCAC 2D .0907, .0910,

.0911 and .0946.

**Proposed Effective Date:**

15A NCAC 2D .0518, .0524, .0530, .0902, .0907, .0909 - .0911, .0946, .0954, .1110 - .1111, .1402 - .1403; 2Q .0104, .0107 - April 1, 1997. 15A NCAC 2Q .0102, .0507, .0512, .0514 - .0515 and .0517 - July 1, 1997.

**A Public Hearing will be conducted at 7:00 p.m. on July 31, 1996 at the Archdale Building, Groundfloor Hearing Room, 512 N. Salisbury Street, Raleigh, NC 27604.**

**Reason for Proposed Action:**

**15A NCAC 2D .0518, .0524, .0902, .0907, .0909, .0910, .0911, .0946, .0954, .1111, .1402, .1403 - To change the mechanism and procedures for activating the reasonably available technology (RACT) rules for volatile organic compounds (VOC) and nitrogen oxides (NOx) in the Raleigh/Durham and Greensboro/Winston Salem/High Point areas and to delete unnecessary or elapsed compliance schedules.**

**15A NCAC 2D .0530 - To incorporate the latest edition of the federal Code of Federal Regulations and remove language for default issuance of permits upon failure of DEM to act on a permit application within 90 days.**

**15A NCAC 2D .1110 - To adopt federal National Emission Standards for Hazardous Air Pollutants by reference.**

**15A NCAC 2Q .0104 - To remove a cross-reference to a repealed rule.**

**15A NCAC 2Q .0107 - To correct a cross-reference to an amended General Statute.**

**15A NCAC 2Q .0102, .0507, .0512, .0514, .0515, .0517 - To revise Title V permitting procedures and permit exemptions per EPA comment on North Carolina's Title V permitting program.**

**Comment Procedures:** All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing record will remain open until August 30, 1996, to receive additional written statements. The Commission has specifically asked for comment on the proposed amendments to the permit exemption rule for boilers and case-by-case. The Division currently has an exemption level of 40 tons per year (potential for boilers). In its interim approval of the State's Title V program, EPA commented that the State needed to limit these two exemptions to sources with emissions of no more than 5 tons per year (potential). Specifically, should the level be set at the current 40 tons per year or at five tons per year or something in between?

Comments should be sent to and additional information concerning the hearing or the proposals may be obtained by contacting:

Mr. Thom Allen  
Division of Environmental Management  
P.O. Box 29535  
Raleigh, North Carolina 27626-0535  
(919) 733-1489 - Phone  
(919) 733-1812 - Fax

**Fiscal Note:** Rules 2Q .0102, .0507, .0512, .0514, .0515 and .0517 affect the expenditures or revenues of state and local government funds. The remainder rules do not affect

the expenditures or revenues of state or local government funds. These Rules do not have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.

**CHAPTER 2 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS**

**SECTION .0500 - EMISSION CONTROL STANDARDS**

**.0518 MISCELLANEOUS VOLATILE ORGANIC COMPOUND EMISSIONS**

(a) This Rule shall be applicable to all sources of volatile organic compound emissions for which no other volatile organic compound emission control standards are applicable, including those standards found in Section .0900 of this Subchapter as well as Rules .0524, .1110, or .1111 of this Subchapter, or 40 CFR Part 63.

(b) A person shall not place, store or hold in any stationary tank, reservoir, or other container with a capacity greater than 50,000 gallons, any liquid compound containing carbon and hydrogen or containing carbon and hydrogen in combination with any other element which has a vapor pressure of 1.5 pounds per square inch absolute or greater under actual storage conditions unless such tank, reservoir, or other container:

(1) is a pressure tank, capable of maintaining working pressures sufficient at all times to prevent vapor gas loss into the atmosphere; or

(2) is designed and equipped with one of the following vapor loss control devices:

(A) a floating pontoon, double deck type floating roof or internal pan type floating roof equipped with closure seals to enclose any space between the cover's edge and compartment wall; this control-equipment shall not be permitted if the compound is a photochemically reactive material having a vapor pressure of 11.0 pounds per square inch absolute or greater under actual storage conditions; all tank gauging or sampling devices shall be gas-tight except when tank gauging or sampling is taking place;

(B) a vapor recovery system or other equipment or means of air pollution control as approved by the Director which reduces the emission of organic materials into the atmosphere by at least 90 percent by weight; all tank gauging or sampling devices shall be gas-tight except when tank gauging or sampling is taking place.

(c) A person shall not load in any one day more than 20,000 gallons of any volatile organic compound into any

tank-truck, trailer, or railroad tank car from any loading facility unless the loading uses submerged loading through boom loaders that extend down into the compartment being loaded or by other methods demonstrated to the Director to be at least as efficient.

(d) With the exemptions of Paragraphs (g) and (h) of this Rule, a person shall not discharge from all sources at any one plant site more than a total of 40 pounds of photochemically reactive solvent into the atmosphere in any one day, from any article, machine, equipment or other contrivance used for employing, applying, evaporating or drying any photochemically reactive solvent or substance containing such solvent unless the discharge has been reduced by at least 85 percent by weight. Photochemically reactive solvents include any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified in this Paragraph, or which exceed any of the following percentage composition limitations, referred to the total volume of the solvent:

- (1) a combination of hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones having an olefinic or cyclo-olefinic type of unsaturation --five percent;
- (2) a combination of aromatic hydrocarbons with eight or more carbon atoms to the molecule except ethylbenzene--eight percent;
- (3) a combination of ethylbenzene, ketones having branched hydrocarbon structure, trichloroethylene, or toluene--20 percent.

Whenever any photochemically reactive solvent, or any constituent of any photochemically reactive solvent may be classified from its chemical structure into more than one of the groups of chemical compounds in this Paragraph, it shall be considered as a member of the most reactive chemical compound group, that is, that group having the least allowable percent of the total volume of solvents. Diacetone alcohol and perchloroethylene are not considered photochemically reactive under this Rule. Compounds that are not volatile organic compounds as defined under 40 CFR 51.100 are also not considered photochemically reactive under this Rule.

(e) A source need not comply with Paragraphs (b), (c), or (d) of this Rule if it complies with otherwise applicable rules in Section .0900 of this Subchapter. However, the source shall not comply with Rules .0902 through .0911, .0950, .0951(c), and .0952 of this Subchapter. This Paragraph shall not apply to sources subject to the requirements of Section .0900 of this Subchapter because of Rule .0902(d), (e), or (f) (e), (f), or (g) of this Subchapter.

(f) Any source to which this Rule applies shall be exempted from the requirements of Paragraphs (b), (c), or (d) if control equipment is installed and operated which meets the requirements of best available control technology as defined in and determined by procedures of Rule .0530 of this Section. A new best available control technology determination and procedure need not be performed if in the judgement of the Director a previous best available control

technology determination is applicable.

(g) Sources at a plant site with emission limits established by Paragraphs (e) or (f) of this Rule, Rule Rules .0524, .1110 or .1111 of this Subchapter, or 40 CFR Part 63 shall be excluded from consideration when determining the compliance of any remaining sources with Paragraph (d) of this Rule.

(h) Recycled solvents shall be considered non-photochemically reactive if:

- (1) The solvents are recycled on-site;
- (2) The solvents were originally non-photochemically reactive; and
- (3) All make-up solvents added to the recycled solvents are non-photochemically reactive.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).*

#### **.0524 NEW SOURCE PERFORMANCE STANDARDS**

(a) With the exception of Paragraph (b) or (c) of this Rule, sources subject to new source performance standards promulgated in 40 CFR Part 60 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedural provisions, and any other provisions, as required therein, rather than with any otherwise-applicable Rule in this Section which would be in conflict therewith.

(b) The following is not included under this Rule: new residential wood heaters (40 CFR 60.530 to 60.539b, Subpart AAA).

(b)(c) Along with the notice appearing in the North Carolina Register for a public hearing to amend this Rule to exclude a standard from this Rule, the Director shall state whether or not the new source performance standards promulgated under 40 CFR Part 60, or part thereof, shall be enforced. If the Commission does not adopt the amendment to this Rule to exclude or amend the standard within 12 months after the close of the comment period on the proposed amendment, the Director shall begin enforcing that standard when 12 months has elapsed after the end of the comment period on the proposed amendment.

(e)(d) New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or an area identified in accordance with 15A NCAC 2D .0902(d) as being in violation of the ambient air quality standard for ozone shall comply with the requirements of 40 CFR Part 60 that are not excluded by this Rule, as well as with any applicable requirements in Section .0900 of this Subchapter.

(d)(e) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director of the Division of Environmental Management rather than to the Environmental Protection Agency.

(e)(f) In the application of this Rule, definitions contained in 40 CFR Part 60 shall apply rather than those of Section

.0100 of this Subchapter.

(f)(g) 15A NCAC 2Q .0102 and .0302 are not applicable to any source to which this Rule applies except for:

- (1) 40 CFR Part 60, Subpart Dc, industrial, commercial, and institutional steam generating units;
- (2) 40 CFR Part 60, Subpart Kb, volatile organic liquid storage vessels; or
- (3) 40 CFR Part 60, Subpart AAA, new residential wood heaters.

The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 2Q .0300 or .0500.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-21.6.*

**.0530 PREVENTION OF SIGNIFICANT DETERIORATION**

(a) The purpose of the Rule is to implement a program for the prevention of significant deterioration of air quality as required by 40 CFR 51.166 as amended June 3, 1993. March 15, 1996.

(b) For the purposes of this Rule the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 shall apply. The reasonable period specified in 40 CFR 51.166(b)(3)(ii) shall be seven years. The limitation specified in 40 CFR 51.166(b)(15)(ii) shall not apply.

(c) All areas of the State shall be classified as Class II except that the following areas are Class I:

- (1) Great Smoky Mountains National Park;
- (2) Joyce Kilmer Slickrock National Wilderness Area;
- (3) Linville Gorge National Wilderness Area;
- (4) Shining Rock National Wilderness Area;
- (5) Swanquarter National Wilderness Area.

(d) Redesignations of areas to Class I or II may be submitted as state proposals to the Administrator of the Environmental Protection Agency (EPA), if the requirements of 40 CFR 51.166(g)(2) are met. Areas may be proposed to be redesignated as Class III, if the requirements of 40 CFR 51.166(g)(3) are met. Redesignations may not, however, be proposed which would violate the restrictions of 40 CFR 51.166(e). Lands within the boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body.

(e) In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the values set forth in 40 CFR 51.166(c). However, concentration of the pollutant shall not exceed standards set forth in 40 CFR 51.166(d).

(f) Concentrations attributable to the conditions described in 40 CFR 51.166(f)(1) shall be excluded in determining compliance with a maximum allowable increase. However, the exclusions referred to in 40 CFR 51.166(f)(1)(i) or (ii) shall be limited to five years as described in 40 CFR 51.166(f)(2).

(g) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR

51.166(i) and by extension in 40 CFR 51.166(j) through (o). The transition provisions allowed by 40 CFR 52.21 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Rule, except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).

(h) 15A NCAC 2Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the sources to which this Rule applies shall apply for and receive a permit as required in 15A NCAC 2Q .0300 or .0500.

(i) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(j) Volatile organic compounds exempted from coverage in Subparagraph (c)(5) of Rule .0531 of this Section shall also be exempted when calculating source applicability and control requirements under this Rule.

(k) The degree of emission limitation required for control of any air pollutant under this Rule shall not be affected in any manner by:

- (1) that amount of a stack height, not in existence before December 31, 1970, that exceeds good engineering practice; or
- (2) any other dispersion technique not implemented before then.

(l) A substitution or modification of a model as provided for in 40 CFR 51.166(l) shall be subject to public comment procedures in accordance with the requirements of 40 CFR 51.166(e). 40 CFR 51.102.

(m) Permits may be issued on the basis of innovative control technology as set forth in 40 CFR 51.166(s)(1) if the requirements of 40 CFR 51.166(s)(2) have been met, subject to the condition of 40 CFR 51.166(s)(3), and with the allowance set forth in 40 CFR 51.166(s)(4).

(n) If a source to which this Rule applies impacts an area designated Class I by requirements of 40 CFR 51.166(e), notice to EPA will be provided as set forth in 40 CFR

51.166(p)(1). If the Federal Land Manager presents a demonstration described in 40 CFR 51.166(p)(3) during the public comment period or public hearing to the Director and if the Director concurs with this demonstration, the permit application shall be denied. Permits may be issued on the basis that the requirements for variances as set forth in 40 CFR 51.166(p)(4), (p)(5) and (p)(7), or (p)(6) and (p)(7) have been satisfied.

(o) A permit application subject to this Rule shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants will be notified if the application is complete as to initial information submitted. ~~Notwithstanding this determination, the 90-day period provided for the Commission to act by G.S. 143-215.108(b) shall be considered to begin at the end of the period allowed for public comment, at the end of any public hearing held on the application, or when the applicant supplies information requested by the Director in answer to comments received during the comment period or at any public hearing, whichever is later. The Director shall notify the Administrator of EPA of any application considered approved by expiration of the 90 days; this notification shall be made within 10 working days of the date of expiration. If no permit action has been taken when 70 days of the 90-day period have expired, the Commission shall relinquish its prevention of significant deterioration (PSD) authority to EPA for that permit. The Commission shall notify by letter the EPA Regional Administrator and the applicant when 70 days have expired. EPA will then have responsibility for satisfying unmet PSD requirements, including permit issuance with appropriate conditions. The permit applicant must secure from the Commission, a permit revised (if necessary) to contain conditions at least as stringent as those in the EPA permit, before beginning construction. Commencement of construction before full PSD prevention of significant deterioration approval is obtained constitutes a violation of this Rule.~~

(p) Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other rules of this Chapter and any other requirements under local, state, or federal law.

(q) When a source or modification subject to this Rule may affect the visibility of a Class I area named in Paragraph (c) of this Rule, the following procedures shall apply:

(1) The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days prior to the publication of notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility.

(2) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice as to where the explanation can be obtained.

(3) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

(r) Revisions of the North Carolina State Implementation Plan for Air Quality shall comply with the requirements contained in 40 CFR 51.166(a)(2).

(s) The version of the Code of Federal Regulations incorporated in this Rule is that as of ~~June 3, 1993, March 15, 1996~~, and does not include any subsequent amendments or editions to the referenced material.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b); 150B-21.6.

## SECTION .0900 - VOLATILE ORGANIC COMPOUNDS

### .0902 APPLICABILITY

(a) Rules .0925, .0926, .0927, .0928, .0932, and .0933 of this Section apply statewide, in accordance with Rule .0916 of this Section. The following Rules of this Section apply statewide:

- (1) .0925, Petroleum Liquid Storage in Fixed Roof Tanks, for fixed roof tanks at gasoline bulk plants and gasoline bulk terminals;
- (2) .0926, Bulk Gasoline Plants;
- (3) .0927, Bulk Gasoline Terminals;
- (4) .0928, Gasoline Service Stations Stage I;
- (5) .0932, Gasoline Truck Tanks and Vapor Collection Systems; and
- (6) .0933, Petroleum Liquid Storage in External Floating Roof Tanks, for external floating roof tanks at bulk gasoline plants and bulk gasoline terminals.

(b) Rule .0953 .0953, Vapor Return Piping for Stage II Vapor Recovery, of this Section applies in Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Wake, Dutchville Township in Granville County, and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River in accordance with provisions set out in that Rule.

(c) All sources located in Mecklenburg County that were

required to comply with any of these Rules:

- (1) .0917 through .0938 of this Section, or
- (2) .0943 through .0946 of this Section,

before July 5, 1995, shall continue to comply with these Rules.

~~(e)(d) With the exceptions stated in Paragraph (g) Paragraphs (a), (b), (c), or (h) of this Rule, this Section applies to: applies, in accordance with Rules .0907 and .0946 of this Section, to all sources of volatile organic compounds located in an area designated in 40 CFR 81.334 as nonattainment for ozone.~~

(1) Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties in accordance with Paragraph (e) of this Rule;

(2) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River in accordance with Paragraph (f) of this Rule; or

(3) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County in accordance with Paragraph (g) of this Rule.

~~(d) With the exceptions stated in Paragraph (g) of this Rule, this Section shall apply, in accordance with Rule .0909 of this Section, to all sources of volatile organic compounds located in any of the following areas and in that area only when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone:~~

(1) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River; or

(2) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County.

~~At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice of violation, the Director shall send written notification to all permitted facilities within the area of violation that are or may be subject to the requirements of this Section as a result of the violation informing them that they are or may be subject to the requirements of this Section. Violations of the ambient air quality standard for ozone shall be determined in accordance with 40 CFR 50.9.~~

(e) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Cabarrus, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, or Union County, North Carolina or York County, South Carolina, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source

control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the Rules rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Gaston or Mecklenburg County or in both counties. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Mecklenburg County, "Director" means for the purpose of notifying permitted facilities in Mecklenburg County, the Director of the Mecklenburg County local air pollution control program.) Compliance shall be in accordance with Rule .0909 of this Section.

(f) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Forsyth County, "Director" means for the purpose of notifying permitted facilities in Forsyth County, the Director of the Forsyth County local air pollution control program.) Compliance shall be in accordance with Rule .0909 of this Section.

(g) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in

Durham or Wake County or Dutchville Township in Granville County, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Durham or Wake County or Dutchville Township in Granville County or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be in accordance with Rule .0909 of this Section.

(f) This Section shall not apply to facilities in Mecklenburg County whose potential emissions of volatile organic compounds are less than 100 tons per year or to facilities in Gaston County until May 1, 1997. If Mecklenburg County is designated attainment in 40 CFR 81.334, all sources in Mecklenburg County subject to a rule in this Section before May 1, 1997, shall continue to comply with all such applicable rules in this Section. If any county or part of a county to which this Section applies in accordance with Paragraph (e) of this Rule is later designated in 40 CFR 81.334 as attainment for ozone, all sources in that county or that part of the county subject to a rule in this Section before the redesignation date shall continue to comply with all applicable rules in this Section.

(g)(h) This Section does not apply to:

- (1) sources whose emissions of volatile organic compounds are not more than 15 pounds per day, except that this Section does apply to the manufacture and use of cutback asphalt and to gasoline service stations or gasoline dispensing facilities regardless of levels of emissions of volatile organic compounds;
- (2) sources used exclusively for chemical or physical analysis or determination of product quality and commercial acceptance provided:
  - (A) The operation of the source is not an integral part of the production process;
  - (B) The emissions from the source do not exceed 800 pounds per calendar month; and
  - (C) The exemption is approved in writing by the Director as meeting the requirements of this Subparagraph; or

(3) emissions of volatile organic compounds during startup or shutdown operations from sources which use incineration or other types of combustion to control emissions of volatile organic compounds whenever the off-gas contains an explosive mixture during the startup or shutdown operation if the exemption is approved by the Director as meeting the requirements of this Subparagraph.

(h)(i) Sources whose emissions of volatile organic compounds are not subject to limitation under this Section may still be subject to emission limits on volatile organic compounds in Rule .0518, .0524, .1110, or .1111 of this Subchapter.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

#### **.0907 COMPLIANCE SCHEDULES FOR SOURCES IN NONATTAINMENT AREAS**

(a) With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered by Paragraph (e) of Rule .0902 of this Section on May 1, 1997, that are subject to Rules .0917 through .0924, .0929 through .0931, .0934 through .0938, .0943 through .0945, and .0947 through .0951 of this Section.

(b) This Rule does not apply to:

(1) sources in Mecklenburg County to which Rules .0917 through .0938 of this Section apply and which are located at a facility where the total potential emissions of volatile organic compounds from all stationary sources at the facility is 100 tons per year or more, or

(2) sources covered under Rule .0946, .0953, or .0954 of this Section.

(c) The owner or operator of any source subject to this Rule who proposes to comply with a rule in this Section by installing emission control equipment, replacing process equipment, or modifying existing process equipment, shall adhere to the following increments of progress and schedules:

(1) A permit application and a compliance schedule shall be submitted before May 1, 1997;

(2) The compliance schedule shall contain the following increments of progress:

(A) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;

(B) a date by which on site construction or installation of the emission control and process equipment shall begin; and

(C) a date by which on site construction or installation of the emission control and process equipment shall be completed.

(3) Final compliance shall be achieved by May 31, 1999.

The owner or operator shall certify to the Director within 10

days after the deadline, for each increment of progress, whether the required increment of progress has been met.

(d) The owner or operator of any source subject to this Rule who proposes to comply with a rule in this Section by using low solvent content coating technology shall adhere to the following increments of progress and schedules:

- (1) The permit application and a compliance schedule shall be submitted before May 1, 1997.
- (2) The compliance schedule shall contain the following increments of progress:
  - (A) a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed;
  - (B) a date by which evaluation of product quality and commercial acceptance shall be completed;
  - (C) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;
  - (D) a date by which process modifications shall be initiated; and
  - (E) a date by which process modifications shall be completed and use of low solvent content coatings shall begin.
- (3) Final compliance shall be achieved by May 31, 1999.

The owner or operator shall certify to the Director within 10 days after the deadline, for each increment of progress, whether the required increment of progress has been met.

(e) The owner or operator of sources subject to this Rule shall, if the Director requires a test to demonstrate that compliance has been achieved, conduct a test and submit a final test report within six months after the stated date of final compliance.

(f) With such exception as the Director may allow, the owner or operator of any source subject to this Rule shall continue to comply with 15A-NCAC 2D .0518 until such time as the source complies with applicable rules in this Section or until the final compliance date set forth in this Rule, whichever comes first. The Director may allow the following exceptions:

- (1) testing coating materials;
- (2) making or testing equipment or process modifications; or
- (3) adding or testing control devices.

(g) The owner or operator of any new source of volatile organic compounds not in existence or under construction as of April 30, 1997, shall comply with all applicable rules in this Section upon start up of the source.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

**.0909 COMPLIANCE SCHEDULES FOR SOURCES IN NEW NONATTAINMENT AREAS**

(a) With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered by Paragraph (d) or (e) Paragraphs (e), (f), or (g) of Rule .0902 of this Section.

(b) This Rule does not apply to:

- (1) sources in Mecklenburg County required to comply with the requirements of this Section under Rule .0902(c) of this Section; to which Rules .0917 through .0938 apply and which are located at a facility where the total potential emissions of volatile organic compounds from all stationary sources at the facility is 100 tons per year or more, or
- (2) sources covered under Rule .0946, .0953, .0953 or .0954 of this Section; Section; or
- (3) sources required to comply with the requirements of this Section under Rule .0902(a) of this Section.

(c) The owner or operator of any source subject to this Rule because of the application of Paragraph (d) or (e) Paragraphs (e), (f), or (g) of Rule .0902 of this Section shall adhere to the following increments of progress and schedules:

- (1) if compliance is to be achieved by installing emission control equipment, replacing process equipment, or modifying existing process equipment:
  - (A) A permit application and a compliance schedule shall be submitted within six months after the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone;
  - (B) The compliance schedule shall contain the following increments of progress:
    - (i) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
    - (ii) a date by which on-site construction or installation of the emission control and process equipment shall begin; and
    - (iii) a date by which on-site construction or installation of the emission control and process equipment shall be completed;
  - (C) Final compliance shall be achieved within three years after the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone.
- (2) if compliance is to be achieved by using low solvent content coating technology:
  - (A) A permit application and a compliance schedule shall be submitted within six months after the Director notices in the

North Carolina Register that an area is in violation of the ambient air quality standard for ozone;

(B) The compliance schedule shall contain the following increments:

- (i) a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed;
- (ii) a date by which evaluation of product quality and commercial acceptance shall be completed;
- (iii) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;
- (iv) a date by which process modifications shall be initiated; and
- (v) a date by which process modifications shall be completed and use of low solvent content coatings shall begin;

(C) Final compliance shall be achieved within three years after the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone.

(d) The owner or operator shall certify to the Director within five days after the deadline, for each increment of progress in Paragraph (c) of this Rule, whether the required increment of progress has been met.

(e) If the Director requires a test to demonstrate that compliance has been achieved the owner or operator of sources subject to this Rule shall conduct a test and submit a final test report within six months after the stated date of final compliance.

(f) With such exception as the Director may allow, the owner or operator of any source subject to this Rule shall continue to comply with 15A NCAC 2D .0518 until such time as the source complies with applicable rules in this Section or until the final compliance date set forth in this Rule, whichever comes first. The Director may allow the following exceptions:

- (1) testing coating materials;
- (2) making or testing equipment or process modifications; or
- (3) adding or testing control devices.

(g) The owner or operator of any new source of volatile organic compounds not in existence or under construction as of the date that the Director notices in the North Carolina Register in accordance with Paragraph (d) or (e) Paragraphs (e), (f), or (g) of Rule .0902 of this Section that the area is in violation of the ambient air quality standard for ozone, shall comply with all applicable rules in this Section upon

start-up of the source.

(h) Paragraph Paragraphs (c), (d), and (f) of this Rule will not apply to sources that are in compliance with applicable rules of this Section when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone and that have determined and certified compliance to the satisfaction of the Director within six months after the Director notices in the North Carolina Register that the area is in violation.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

#### **.0910 ALTERNATIVE COMPLIANCE SCHEDULES**

(a) If the Director finds that the application of a compliance schedule in Rule .0907 of this Section would be technologically or economically infeasible for a source, he may promulgate a different schedule for that source.

(b) The owner or operator of a volatile organic compound source affected by a rule in this Section may submit to the Director a proposed alternative compliance schedule if:

- (1) The proposed alternative compliance schedule is submitted before May 1, 1997;
- (2) The final control plans for achieving compliance are submitted simultaneously;
- (3) The alternative compliance schedule contains the same increments of progress as the schedule for which it is proposed as an alternative; and
- (4) Sufficient documentation and certification from appropriate suppliers, contractors, manufacturers, or fabricators are submitted to justify the dates proposed for the increments of progress.

(c) The owner or operator of a volatile organic compound source affected by a rule in this Section may submit to the Director an alternative compliance schedule for the phase out or shut down of a volatile organic compound source, if:

- (1) The proposed alternative compliance schedule is submitted before May 1, 1997; and
- (2) The final control plans for achieving compliance with rules of this Section are submitted simultaneously.

(d) All alternative compliance schedules proposed or promulgated under this Rule shall provide for compliance with the applicable rules as expeditiously as practicable but not later than May 31, 1999.

(e) Any schedule approved under this Rule may be revoked at any time if the source does not meet the increment of progress stipulated.

(f) When an alternate compliance schedule is promulgated under this Rule, the permit shall contain a condition stating the compliance schedule.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

#### **.0911 EXCEPTION FROM COMPLIANCE SCHEDULES**

~~Rule .0907 of this Section will not apply to sources that are in compliance with applicable rules of this Section before May 1, 1996, and that have determined and certified compliance to the satisfaction of the Director before August 1, 1996.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

**.0946 COMPLIANCE SCHEDULE: GASOLINE HANDLING**

~~(a) With the exception in Paragraph (b) of this Rule, this Rule applies to all sources covered by Rules .0925, .0926, .0927, .0928, .0932, or .0933 of this Section.~~

~~(b) This Rule does not apply to sources in Mecklenburg County to which Rules .0925, .0926, .0927, .0928, .0932, or .0933 of this Section apply and which are located at a facility where the total potential emissions of volatile organic compounds from all stationary sources at the facility are 100 tons per year or more.~~

~~(c) The owner or operator of any bulk gasoline plant or bulk gasoline terminal subject to this Rule and Rule .0926 or .0927 of this Section or any tank subject to this Rule and Rule .0925 or .0933 of this Section and located at a bulk gasoline plant or bulk gasoline terminal subject to this Rule and Rule .0926 or .0927 of this Section shall adhere to the following increments of progress and schedules:~~

- ~~(1) The air permit application including final plans and a compliance schedule shall be submitted before November 1, 1990;~~
- ~~(2) The compliance schedule shall contain the following increments of progress:
  - ~~(A) a date by which contracts for the emission control system and/or process equipment shall be awarded or orders shall be issued for purchase of component parts;~~
  - ~~(B) a date by which on site construction or installation of the emission control and/or process equipment shall begin;~~
  - ~~(C) a date by which on site construction or installation of the emission control and/or process equipment shall be completed; and~~
  - ~~(3) Final compliance shall be achieved by November 1, 1992.~~~~

~~The owner or operator shall certify to the Director prior to the date five days after the deadline for each increment whether the required increment of progress has been met.~~

~~(d) The owner or operator of any gasoline service station or gasoline dispensing facility subject to this Rule and Rule .0928 of this Section shall comply with Rules .0928, .0932, .0925, and .0933 of this Section by November 1, 1992.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

**.0954 STAGE II VAPOR RECOVERY**

~~(a) Applicability. In accordance with Paragraphs (d) or (e), (f), or (g) of Rule .0902 of this Section, this Rule applies to the control of gasoline vapors at the vehicle fill-~~

pipe during refueling operations at a facility. The vapors shall be captured and returned to a vapor-tight underground storage tank or shall be captured and destroyed. These systems shall be installed at all facilities that dispense gasoline to motor vehicles unless exempted under Paragraph (b) of this Rule.

~~(b) Exemptions. The following gasoline dispensing facilities are exempt from this Rule based upon the previous two years records:~~

- ~~(1) any facility which dispenses less than 10,000 gallons of gasoline per calendar month;~~
- ~~(2) any facility which dispenses less than 50,000 gallons of gasoline per calendar month and is an independent small business marketer of gasoline;~~
- ~~(3) any facility which dispenses gasoline exclusively for refueling marine vehicles, aircraft, farm equipment, and emergency vehicles; or~~
- ~~(4) any tanks used exclusively to test the fuel dispensing meters.~~

~~Any facility that ever exceeds the exemptions given in Subparagraphs (1), (2), (3) or (4) in this Paragraph shall be subject to all of the provisions of this Rule in accordance with the schedule given in Subparagraph (f) of this Rule, and shall remain subject to these provisions even if the facility's later operation meets the exemption requirements.~~

~~(c) Proof of Eligibility. The burden of proof of eligibility for exemption from this Rule is on the owner or operator of the facility. Persons seeking an exemption from this Rule shall maintain the following:~~

- ~~(1) chronologically arranged bills of lading for receipt of gasoline shipments from the last three years, and~~
- ~~(2) daily inventory of each gasoline type for each day of operation or equivalent records as required; this shall be maintained for the last three years.~~

~~These records shall be furnished to the Director upon request.~~

~~(d) Definitions. For the purpose of this Rule, the following definitions apply:~~

- ~~(1) "CARB" means the California Air Resources Board.~~
- ~~(2) "Certified STAGE II Vapor Recovery System" means any system certified by the California Air Resources Board as having a vapor recovery or removal efficiency of at least 95 percent by weight.~~
- ~~(3) "Defective equipment" means any absence, disconnection, or malfunction of a Stage II vapor recovery system component which is required by this Rule including the following:
  - ~~(A) a vapor return line that is crimped, flattened or blocked or that has any hole or slit that allows vapors to leak out;~~
  - ~~(B) a nozzle bellows that has any hole or tear large enough to allow a 1/4 inch diameter cylindrical rod to pass through it or any slit one inch or more in length;~~~~

- (C) a nozzle face-plate or cone that is torn or missing over 25 percent of its surface;
  - (D) a nozzle with no automatic overfill control mechanism or an inoperable overfill control mechanism;
  - (E) an inoperable or malfunctioning vapor processing unit, vacuum generating device, pressure or vacuum relief valve, vapor check valve or any other equipment normally used to dispense gasoline, or that is required by this Rule; or
  - (F) a failure to meet the requirements of Paragraph (g) of this Rule.
- (4) "Facility" means any gasoline service station, gasoline dispensing facility, or gasoline cargo tanker.
- (5) "ISBM" means independent small business marketer.
- (6) "Independent Small Business Marketer of Gasoline" means a facility that qualifies under Section 324 of the Federal Clean Air Act.
- (7) "Operator" means any person who leases, operates, controls, or supervises a facility at which gasoline is dispensed.
- (8) "Owner" means any person who has legal or equitable title to the gasoline storage tank at a facility.
- (9) "Pressure Balanced Stage II System" means one which is not vacuum-assisted. That is, the volume of vapor in the automobile's fuel tank displaced by the incoming liquid gasoline equals the space in the underground tank created by the gasoline leaving.
- (10) "Remote Vapor Check Valve" means a check valve in the vapor return line but not located in the nozzle.
- (11) "Stage II Vapor Recovery" means the control of gasoline vapor at the vehicle fill-pipe, where the vapors are captured and returned to a vapor-tight storage tank or are captured and destroyed.
- (12) "Throughput" means the amount of gasoline dispensed at a facility during any calendar month after June 30, 1994.
- (e) Stage II Requirements. No person shall transfer or permit the transfer of gasoline into the fuel tank of any motor vehicle at any applicable facility unless:
- (1) the transfer is made using a Certified Stage II vapor recovery system that meets the requirements of the inspections;
  - (2) all installed Stage II vapor recovery systems use coaxial vapor recovery hoses; no dual-hose designs shall be used;
  - (3) all installed Stage II vapor recovery systems used are certified by CARB except that the Stage 1 system need not be CARB certified. In addition, no Stage II system shall employ a remote vapor
- check valve. Pressure balanced Stage II systems may be used; and
- (4) the underground vapor return piping satisfies the requirements of Rule .0953 of this Subchapter.
- In the event that CARB revokes certification of an installed system, the owner or operator of the facility shall have four years to modify his equipment to conform with re-certification requirements unless modifications involve only the replacement of dispenser check valves, hoses, or nozzles or appurtenances to these components in which case the allowed time period is three months. This time period is defined as the period from the day that the owner or operator of the facility has been officially notified by the Director.
- (f) Compliance Schedule. If the gasoline service station or gasoline dispensing facility is subject to the requirements of this Rule in accordance with ~~Paragraph (d) or (e) Paragraphs (e), (f), or (g)~~ of Rule .0902 of this Section, compliance shall be achieved no later than:
- (1) one year from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for facilities having any single monthly throughput of at least 100,000 gallons per month;
  - (2) two years from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for facilities having any single monthly throughput of greater than 10,000 gallons but less than 100,000 gallons;
  - (3) for affected facilities owned by a single ISBM:
    - (A) one year from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for 33 percent of affected facilities;
    - (B) two years from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for 66 percent of the affected facilities;
    - (C) three years from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for the remainder of the affected facilities;
  - (4) 18 months after the day the owner or operator of the facility has been notified by the Director that his exemption under Paragraph (b) of this Rule has been revoked; or
  - (5) before beginning operation for islands constructed after the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone.
- (g) Testing Requirements
- (1) Within 30 days after the commencement of operation of the Stage II system and every five years

thereafter, the owner or operator of the facility shall submit reports of the following tests as described in EPA-450/3-91-022b:

- (A) Bay Area Source Test Procedure ST-30, Leak Test Procedure, or San Diego Test Procedure TP-91-1, Pressure Decay/Leak Test Procedure every five years;
- (B) Bay Area Source Test Procedure ST-27, Dynamic Back Pressure, or San Diego Test Procedure TP-91-2, Pressure Drop vs Flow/Liquid Blockage Test Procedure every five years; and
- (C) Bay Area Source Test Procedure ST-37, Liquid Removal Devices every five years.

If the tests have been performed within the last two years the owner or operator may submit a copy of those tests in lieu of retesting. Testing shall be in accordance with Rule .0912 of this Section.

- (2) The owner or operator shall perform daily testing and inspections as follows:

- (A) daily tests to ensure proper functioning of nozzle automatic overfill control mechanisms and flow prohibiting mechanisms, and
- (B) daily visual inspection of the nozzle bellows and face-plate.

- (3) The owner or operator of the facility and the test contractor shall report all test failures to the Regional Office Supervisor within 24 hours of the failure.

- (4) The Director may require the owner or operator of the facility to perform any of the tests in Subparagraph (1) of this Paragraph if there are any modifications or repairs.

- (5) Where the Air Quality Division conducts tests or upon requirement from the Director to test the vapor control system it shall be without compensating the owner or operator of the facility for any lost revenues incurred due to the testing procedure.

(h) **Operating Instructions and Posting**

- (1) The owner or operator of the facility shall post operating instructions for the vapor recovery system on the top one-third of the front of each gasoline dispenser to include the following:

- (A) a clear description of how to correctly dispense gasoline with the vapor recovery nozzles,
- (B) a warning that repeated attempts to continue dispensing gasoline, after the system has indicated that the vehicle fuel tank is full (by automatically shutting off), may result in spillage or recirculation of gasoline,
- (C) a telephone number to report problems experienced with the vapor recovery system

(D) to the owner or operator of the facility, and a telephone number to report problems experienced with the vapor recovery system to the Director.

- (2) The owner or operator shall provide written instructions on site as detailed in EPA-450/3-91-022b to insure that employees of the facility have an accurate understanding of the operation of the system and, in particular, when the system is malfunctioning and requires repair.

(i) **Other General Requirements.** The owner or operator of the facility shall conspicuously post "Out of Order" signs on any nozzle associated with any aboveground part of the vapor recovery system which is defective until the system has been repaired to bring it back into compliance with this Rule.

(j) **Record-keeping and Reporting.** Owners or operators of the facility shall maintain records in accordance with Rule .0903 of this Section on compliance and testing.

(k) **Referenced document.** EPA-450/3-91-022b, "Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume II: Appendices", November 1991, cited in this Rule is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document is available for inspection at the Regional Offices of the North Carolina Department of Environment, Health, and Natural Resources (addresses are given in Rule .0103 of this Subchapter). Copies of this document may be obtained through the Library Services Office (MD-35), U. S. Environmental Protection Agency, Research Triangle Park or National Technical Information Services, 5285 Port Royal Road, Springfield VA 22161. The NTIS number for this document is PB-92132851 and the cost is fifty-two dollars (\$52.00).

*Authority G.S. 143-215.3(a)(1); 143-215.107(a); 150B-21.6.*

**SECTION .1100 - CONTROL OF TOXIC AIR POLLUTANTS**

**.1110 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS**

(a) ~~Sources emitting pollutants of the following types when With the exception of Paragraph (b) of this Rule, sources~~ subject to national emission standards for hazardous air pollutants promulgated in 40 CFR Part 61 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedural provisions, and any other provisions, as required therein, rather than with any otherwise-applicable Rule in Section .0500 of this Subchapter ~~which that~~ would be in conflict therewith. ~~New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or in an area identified in accordance with 15A-NCAC 2D .0902(e) as~~

being in violation of the ambient air quality standard for ozone shall comply with the following requirements, as well as with any applicable requirements in Section .0900 of this Subchapter:

- (1) asbestos (40 CFR 61.01 to 61.19 and 61.140 to 61.159, Subpart M, with the exception named in 40 CFR 61.157);
- (2) beryllium (40 CFR 61.01 to 61.19 and 61.30 to 61.39, Subpart C);
- (3) beryllium from rocket motor firing (40 CFR 61.01 to 61.19 and 61.40 to 61.49, Subpart D);
- (4) mercury (40 CFR 61.01 to 61.19 and 61.50 to 61.59, Subpart E);
- (5) vinyl chloride (40 CFR 61.01 to 61.19 and 61.60 to 61.71, Subpart F);
- (6) equipment leaks (fugitive emission sources) of benzene (40 CFR 61.01 to 61.19 and 61.110 to 61.119, Subpart J);
- (7) equipment leaks (fugitive emission sources) (of volatile hazardous air pollutants) (40 CFR 61.01 to 61.19 and 61.240 to 61.249, Subpart V);
- (8) inorganic arsenic emissions from glass manufacturing plants (40 CFR 61.01 to 61.19 and 61.160 to 61.169, Subpart N);
- (9) inorganic arsenic emissions from primary copper smelters (40 CFR 61.01 to 61.19 and 61.170 to 61.179, Subpart O);
- (10) inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities (40 CFR 61.01 to 61.19 and 61.180 to 61.186, Subpart P);
- (11) benzene emissions from benzene transfer operations (40 CFR 61.01 to 61.19 and 61.300 to 61.306, Subpart BB);
- (12) benzene waste operations (40 CFR 61.01 to 61.19 and 61.340 to 61.358, Subpart FF);
- (13) benzene emissions from coke by product recovery plants (40 CFR 61.01 to 61.19 and 61.130 to 61.139, Subpart L); and
- (14) benzene emissions from benzene storage vessels (40 CFR 61.01 to 61.19 and 61.270 to 61.277 except 61.273, Subpart Y).

(b) Along with the notice appearing in the North Carolina Register for a public hearing to amend this Rule to exclude a standard from this Rule, the Director shall state whether or not the national emission standards for hazardous air pollutants promulgated under 40 CFR Part 61, or part thereof, shall be enforced. If the Commission does not adopt the amendment to this Rule to exclude or amend the standard within 12 months after the close of the comment period on the proposed amendment, the Director shall begin enforcing that standard when 12 months has elapsed after the end of the comment period on the proposed amendment.

(c) New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or an area identified in accordance with 15A NCAC 2D .0902(e), (f), or (g) as in violation of the ambient air quality standard for ozone shall comply with

the requirements of 40 CFR Part 61 that are not excluded by this Rule, as well as with any applicable requirements in Section .0900 of this Subchapter.

(d) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director of the Division of Environmental Management rather than to the Environmental Protection Agency; except that all such reports, applications, submittals, and other communications to the administrator required by 40 CFR 61.145 shall be submitted to the Director, Division of Epidemiology.

(e) In the application of this Rule, definitions contained in 40 CFR Part 61 shall apply rather than those of Section .0100 of this Subchapter. Subchapter when conflict exists.

(f) 15A NCAC 2Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 2Q .0300 or .0500.

(g) The Code of Federal Regulations cited in this Rule are incorporated by reference and shall automatically include any later amendments thereto except for categories of sources not referenced in Paragraph (a) of this Rule. Categories of sources not referenced in Paragraph (a) of this Rule for which EPA has promulgated national emission standards for hazardous air pollutants in 40 CFR Part 61, if and when incorporated into this Rule, shall be incorporated using rule making procedures.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-21.6.

#### .1111 MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY

(a) With the exception of Paragraph (b) or (c) of this Rule, sources subject to national emission standards for hazardous air pollutants for source categories promulgated in 40 CFR Part 63 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedural provisions, and any other provisions, as required therein, rather than with any otherwise-applicable Rule rule in Section .0500 of this Subchapter which would be in conflict therewith.

(b) The following are not included under this Rule:

- (1) approval of state programs and delegation of federal authorities (40 CFR 63.90 to 63.96, Subpart E); and
- (2) requirements for control technology determined for major sources in accordance with Clean Air Act Sections 112(g) and 112(j) (40 CFR 63.50 to 63.57, Subpart B).

(c) Along with the notice appearing in the North Carolina Register for a public hearing to amend this Rule to exclude a standard from this Rule, the Director shall state whether or not the national emission standard for hazardous air

pollutants for source categories promulgated under 40 CFR Part 63, or part thereof, shall be enforced. If the Commission does not adopt the amendment to this Rule to exclude or amend the standard within 12 months after the close of the comment period on the proposed amendment, the Director shall begin enforcing that standard when 12 months has elapsed after the end of the comment period on the proposed amendment.

(d) New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or an area identified in accordance with 15A NCAC 2D .0902-.0902(d) as being in violation of the ambient air quality standard for ozone shall comply with the requirements of 40 CFR Part 63 that are not excluded by this Rule as well as with any applicable requirements in Section .0900 of this Subchapter.

(e) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director of the Division of Environmental Management rather than to the Environmental Protection Agency.

(f) In the application of this Rule, definitions contained in 40 CFR Part 63 shall apply rather than those of Section .0100 of this Subchapter when conflict exists.

(g) 15A NCAC 2Q .0102 and .0302 are not applicable to any source to which this Rule applies if the source is required to be permitted under 15A NCAC 2Q .0500, Title V Procedures. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 2Q .0300 or .0500. Sources that have heretofore been exempted from needing a permit and become subject to requirements promulgated under 40 CFR 63 shall apply for a permit in accordance to 15A NCAC 2Q .0109.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-21.6.

## SECTION .1400 - NITROGEN OXIDES

### .1402 APPLICABILITY

(a) The requirements of this Section shall only apply from April 1 through October 31.

(b) With the exceptions stated in Paragraph (f)(d) of this Rule, this Section shall apply to: apply, in accordance with Rule .1403 of this Section, to all sources of nitrogen oxides located in any of the following areas, and in that area only, when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone:

(1) Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties in accordance with Paragraph (c) of this Rule;

(+) (2) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and the part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River

in accordance with Paragraph (d) of this Rule; to the extent needed as determined through photochemical grid modeling; or  
(2)(3) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County in accordance with Paragraph (e) of this Rule, to the extent needed as determined through photochemical grid modeling.

~~At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice of violation, the Director shall send written notification to all permitted facilities within the area of violation that are, or may be, subject to the requirements of this Section as a result of the violation. Violations of the ambient air quality standard for ozone shall be determined in accordance with 40 CFR 50.9.~~

(c) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Cabarrus, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, or Union County, North Carolina or York County, South Carolina, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Gaston or Mecklenburg County or in both counties. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Mecklenburg County, "Director" means for the purpose of notifying permitted facilities in Mecklenburg County, the Director of the Mecklenburg County local air pollution control program.) Compliance shall be in accordance with Rule .0909 .1403 of this Section.

(d) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring

the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Forsyth County, "Director" means for the purpose of notifying permitted facilities in Forsyth County, the Director of the Forsyth County local air pollution control program.) Compliance shall be in accordance with Rule .1403 of this Section.

(e) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Durham or Wake County or Dutchville Township in Granville County, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Durham or Wake County or Dutchville Township in Granville County or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be in accordance with Rule .1403 of this Section.

(d)(f) This Section does not apply to:

- (1) any sources not required to obtain an air permit under 15A NCAC 2Q .0102;
- (2) any incinerator, or thermal or catalytic oxidizer used primarily for the control of air pollution;
- (3) emergency generators;
- (4) emergency use internal combustion engines;
- (5) stationary combustion turbines constructed before January 1, 1979, that operate no more than 16

- (6) hours from April 1 through October 31; facilities with a federally enforceable potential to emit nitrogen oxides of:
- (A) less than 100 tons per year; and
  - (B) less than 560 pounds per calendar day from April 1 through October 31.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

#### .1403 COMPLIANCE SCHEDULES

(a) This Rule applies to all sources covered by Paragraph (b) of Rule .1402 of this Section.

(b) The owner or operator of a source subject to this Rule because of the applicability of Paragraph (b) Paragraphs (c), (d), or (e) of Rule .1402 of this Section, shall adhere to the following increments of progress and schedules:

- (1) If compliance with this Section is to be achieved through a demonstration to certify compliance without source modification:
  - (A) The owner or operator shall notify the Director in writing within six months after the Director's notice in the North Carolina Register that the source is in compliance with the applicable RACT limitation or RACT standard;
  - (B) The owner or operator shall perform any required testing within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable RACT limitation in accordance with Rule .1404 of this Section; and
  - (C) The owner or operator shall implement any required recordkeeping and reporting requirements within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable RACT standard in accordance with Rule .1404 of this Section.
- (2) If compliance with this Section is to be achieved through the installation of combustion modification technology or other source modification:
  - (A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director's notice in the North Carolina Register. The compliance schedule shall contain the following increments of progress:
    - (i) a date by which contracts for installation of the modification shall be awarded or orders shall be issued for purchase of component parts;
    - (ii) a date by which installation of the modification shall begin;
    - (iii) a date by which installation of the modification shall be completed; and
    - (iv) if the source is subject to a RACT

limitation, a date by which compliance testing shall be completed.

- (C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register unless the owner or operator of the source petitions the Director for an alternative RACT limitation in accordance with Rule .1412 of this Section. If such a petition is made, final compliance shall be achieved within four years after the Director's notice in the North Carolina Register.
- (3) If compliance with this Section is to be achieved through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section:
- (A) The owner or operator shall abide by the applicable requirements of Subparagraphs (b)(1) and (b)(2) of this Rule for certification or modification of each source to be included under the averaging plan;
- (B) The owner or operator shall submit a plan to implement an emissions averaging plan in accordance with Rule .1410 of this Section within six months after the Director's notice in the North Carolina Register.
- (C) Final compliance shall be achieved within one year after the Director's notice in the North Carolina Register unless implementation of the emissions averaging plan requires the modification of one or more of the averaging sources. If modification of one or more of the averaging sources is required, final compliance shall be achieved within three years.
- (4) If compliance with this Section is to be achieved through the implementation of seasonal fuel switching program as provided for in Rule .1411 of this Section:
- (A) The owner or operator shall make all necessary modifications in accordance with Subparagraph (b)(2) of this Rule.
- (B) The owner or operator shall include a plan for complying with the requirements of Rule .1411 of this Section with the permit application required under Part (A) of this Subparagraph.
- (C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register.

(c) The owner or operator shall certify to the Director, within five days after the deadline for each increment of progress in Paragraph (b) of this Rule, whether the required increment of progress has been met.

(d) With such exception as the Director may allow, the owner or operator of any source subject to this Rule shall continue to comply with any applicable requirements for the

control of nitrogen oxides until such time as the source complies with applicable rules in this Section or until the final compliance date set forth in this Rule, which ever comes first. The Director may allow the following exceptions:

- (1) testing of combustion control modifications; or  
(2) adding or testing equipment or methods for the application of RACT.

(e) The owner or operator of any new source of nitrogen oxides not in existence or under construction as of the date the Director notices in the North Carolina Register in accordance with Paragraph (a) or (b) Paragraphs (c), (d), or (e) of Rule .1402 of this Section, shall comply with all applicable rules in this Section upon start-up of the source.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).*

## **SUBCHAPTER 2Q - AIR QUALITY PERMIT PROCEDURES**

### **SECTION .0100 - GENERAL PROVISIONS**

#### **.0102 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS**

(a) If a source is subject to any of the following rules, then the source is not exempted from permit requirements, and the exemptions in Paragraph (b) of this Rule do not apply:

- (1) new source performance standards under 15A NCAC 2D .0524 or 40 CFR Part 60, except new residential wood heaters;
- (2) national emission standards for hazardous air pollutants under 15A NCAC 2D .0525 or 40 CFR Part 61, except asbestos demolition and renovation activities;
- (3) prevention of significant deterioration under 15A NCAC 2D .0530;
- (4) new source review under 15A NCAC 2D .0531 or .0532;
- (5) sources of volatile organic compounds subject to the requirements of 15A NCAC 2D .0900 that are located in Mecklenburg and Gaston Counties;
- (6) sources required to apply maximum achievable control technology for hazardous air pollutants under 15A NCAC 2D .1109 or under 40 CFR Part 63 or to apply generally available control technology (GACT) or work practice standards for hazardous air pollutants under 40 CFR Part 63; or
- (7) sources at facilities subject to 15A NCAC 2D .1100. (If a source does not emit a toxic air pollutant for which the facility at which it is located has been evaluated, it shall be exempted from needing a permit if it qualifies for one of the exemptions in Paragraph (b) of this Rule).

(b) The following activities do not need a permit or permit modification under this Subchapter; however, the

Director may require the owner or operator of these activities to register them under 15A NCAC 2D .0200:

(1) activities exempted because of category (These activities shall not be included on the permit application or in the permit.):

(A) maintenance, upkeep, and replacement:

- (i) maintenance, structural changes, or repairs which do not change the capacity of such process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase in quantity of emission of regulated air pollutants;
- (ii) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use of janitorial products, or insulation removal;
- (iii) use of office supplies, supplies to maintain copying equipment, or blueprint machines;
- (iv) use of fire fighting equipment;
- (v) paving parking lots; or
- (vi) replacement of existing equipment with equipment of the same size, type, and function that does not result in an increase to the actual or potential emission of regulated air pollutants and that does not affect the compliance status, and with replacement equipment that fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes in the permit;

(B) air conditioning or ventilation: comfort air conditioning or comfort ventilating systems which do not transport, remove, or exhaust regulated air pollutants to the atmosphere;

(C) laboratory equipment:

- (i) laboratory equipment used exclusively for chemical or physical analysis for quality control purposes, water or wastewater analyses, or environmental compliance assessments;
- (ii) non-production laboratory equipment used at non-profit health or non-profit educational institutions for chemical or physical analyses, bench scale experimentation or training, or instruction; or

(iii) laboratory equipment used for chemical or physical analysis for bench scale experimentation, training, instruction, or research and development that is not required to be permitted under Section .0500 of this Subchapter;

(D) storage tanks:

- (i) storage tanks used solely to store fuel oils, kerosene, diesel, crude oil, used motor oil, natural gas, or liquified petroleum gas;
- (ii) storage tanks used to store gasoline for which there are no applicable requirements except Stage I controls under 15A NCAC 2D .0928;
- (iii) storage tanks used solely to store inorganic liquids; or
- (iv) storage tanks or vessels used for the temporary containment of materials resulting from an emergency response to an unanticipated release of hazardous materials;

(E) combustion and heat transfer equipment:

- (i) space heaters burning distillate oil, kerosene, natural gas, or liquified petroleum gas operating by direct heat transfer and used solely for comfort heat;
- (ii) residential wood stoves, heaters, or fireplaces;
- (iii) hot water heaters which are used for domestic purposes only and are not used to heat process water;

(F) wastewater treatment processes: industrial wastewater treatment processes or municipal wastewater treatment processes for which there are no applicable requirements;

(G) gasoline distribution: gasoline service stations or gasoline dispensing facilities that are not required to be permitted under Section .0500 of this Subchapter;

(H) miscellaneous:

- (i) motor vehicles, aircraft, marine vessels, locomotives, tractors or other self-propelled vehicles with internal combustion engines;
- (ii) equipment used for the preparation of food for direct on-site human consumption;
- (iii) a source whose emissions are regulated only under Section 112(r) or Title VI of the federal Clean Air Act that is not required to be permitted under Section .0500 of this Subchapter;
- (iv) exit gases from in-line process ana-

- lyzers;
- (v) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
- (vi) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or in conjunction with air pollution control equipment;
- (vii) equipment not vented to the outdoor atmosphere with the exception of equipment that emits volatile organic compounds;
- (viii) equipment that does not emit any regulated air pollutants; or
- (ix) sources for which there are no applicable requirements and are not required to be permitted under Section .0500 of this Subchapter.
- (2) activities exempted because of size or production rate (These activities shall not be included in the permit. If the facility is subject to the permitting procedures under Section .0500 of this Subchapter, these activities shall be listed on the permit applications; application; otherwise, these activities shall not be listed on the permit applications; application):
- (A) storage tanks:
- (i) above-ground storage tanks with a storage capacity of no more than 1100 gallons storing organic liquids, excluding hazardous air pollutants, with a true vapor pressure of no more than 10.8 pounds per square inch absolute at 70°F; or
- (ii) underground storage tanks with a storage capacity of no more than 2500 gallons storing organic liquids, excluding hazardous air pollutants, with a true vapor pressure of no more than 10.8 psi absolute at 70°F;
- (B) combustion and heat transfer equipment: equipment located at a facility not required to be permitted under Section .0500 of this Subchapter:
- (i) fuel combustion equipment, except for internal combustion engines, for which construction, modification, or reconstruction commenced after June 9, 1989, firing exclusively kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, natural gas, liquified petroleum gas, or a mixture of these fuels with a heat input rating less than 10 million BTU per hour;
- (ii) fuel combustion equipment, except for internal combustion engines, for which construction, modification, or reconstruction commenced before June 10, 1989, firing exclusively:
- (I) kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, or a mixture of these fuels with gaseous fuels with a heat input rating less than 30 million BTU per hour,
- (II) natural gas or liquified petroleum gas with a heat input rating less than 65 million BTU per hour;
- (III) space heaters burning waste oil if:
- (I) The heater burns only oil that the owner or operator generates or used oil from do-it-yourself oil changers who generate used oil as household wastes;
- (II) The heater is designed to have a maximum capacity of not more than 500,000 Btu per hour; and
- (III) The combustion gases from the heater are vented to the ambient air;
- (iv) emergency use generators and other internal combustion engines, except self-propelled vehicles, that have a rated capacity of no more than:
- (I) 310 kilowatts or 460 horsepower for natural gas-fired engines,
- (II) 830 kilowatts or 1150 horsepower for liquified petroleum gas-fired engines, or
- (III) 270 kilowatts or 410 horsepower for diesel-fired engines;
- (C) gasoline distribution: bulk gasoline plants with an average daily throughput of less than 4000 gallons that is not required to be permitted under Section .0500 of this Subchapter;
- (D) processes: printing, paint spray booths or other painting or coating operations without air pollution control devices (water wash and filters that are an integral part of the paint spray booth are not considered air

- pollution control devices) located at a facility whose facility-wide actual emissions of:
- (i) Volatile organic compounds are less than five tons per year, and
  - (ii) Photochemically reactive solvent emissions under 15A NCAC 2D .0518 are less than 40 pounds per day;
- provided the facility is not required to be permitted under Section .0500 of this Subchapter.
- (E) miscellaneous:
- (i) any source without an air pollution control device with a potential to emit no more than five tons per year of each regulated pollutant that is not a hazardous air pollutant and whose emissions would not violate any applicable emissions standard and whose emissions of all hazardous air pollutants are below their respective lesser quality cutoff emission rates in 40 CFR Part 63;
  - (ii) any facility without an air pollution control device whose actual emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, or carbon monoxide are each less than five tons per year, whose emissions of all hazardous air pollutants are below their respective lesser quality cutoff emission rates in 40 CFR Part 63, and which is not required to have a permit under Section .0500 of this Subchapter;
  - (iii) emissions of any hazardous air pollutant where the emissions from the facility of that hazardous air pollutant is below its lesser quality cutoff emission rate in 40 CFR Part 63;
  - (iv) electrostatic dry powder coating operations equipped with powder recovery including curing ovens with a heat input of less than 10,000,000 BTU per hour; or
  - (v) any incinerator covered under Paragraph (d) of 15A NCAC 2D .1201.
- (F) case-by-case exemption:
- (i) for activities located at facilities not required to have a permit under Section .0500 of this Subchapter, activities that the applicant demonstrates to the satisfaction of the Director Director:
- (I) to be negligible in their air quality impacts,
- (II) not to have any air pollution control device, and
  - (III) not to violate any applicable emission control standard when operating at maximum design capacity or maximum operating rate, whichever is greater. greater; or
- (ii) for activities located at facilities required to have a permit under Section .0500 of this Subchapter: activities that the applicant demonstrates to the satisfaction of the Director:
- (I) to be negligible in their air quality impacts,
  - (II) not to have any air pollution control device,
  - (III) not to violate any applicable emission control standard when operating at maximum design capacity or maximum operating rate, whichever is greater,
  - (IV) the potential emissions of each criteria pollutant is less than five tons per year, and
  - (V) the potential emissions of each hazardous air pollutant is less than 1000 pounds per year.
- (c) Because an activity is exempted from being required to have a permit does not mean that the activity is exempted from any applicable requirement or that the owner or operator of the source is exempted from demonstrating compliance with any applicable requirement.
- (d) Emissions from stationary source activities identified in Paragraph (b) of this Rule shall be included in determining compliance with the toxic air pollutant requirements under 15A NCAC 2D .1100 or 2H .0610.
- Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.108.
- .0104 WHERE TO OBTAIN AND FILE PERMIT APPLICATIONS**
- (a) Official application forms for a permit or permit modification may be obtained from and shall be filed in writing with the Director, Division of Environmental Management, P.O. Box 29535, Raleigh, North Carolina 27626-0535 or any of the regional offices listed under Rule .0105 of this Section.
- (b) The number of copies of applications to be filed are specified in Rules .0305 (construction and operation permit procedures), ~~.0405 (acid rain permit procedures)~~, .0507 (Title V permit procedures), and .0602 (transportation facility construction air permit procedures) of this Subchapter.

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*Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.*

**.0107 CONFIDENTIAL INFORMATION**

(a) All information required to be submitted to the Commission or the Director under this Subchapter or Subchapter 2D of this Title shall be disclosed to the public unless the person submitting the information can demonstrate that the information is entitled to confidential treatment under G.S. 143-215.3C, 143-215.3(a)(2).

(b) A request that information be treated as confidential shall be made by the person submitting the information at the time that the information is submitted, submittal is made. The request shall state in writing reasons why the information should be held confidential. Any request not meeting these requirements shall be invalid.

(c) The Director shall make a preliminary determination of which information is entitled to confidential treatment and shall notify the person requesting confidential treatment of his decision within 90 days of receipt of a request to treat information as confidential.

*Authority G.S. 143-215.3(a)(1); 143-215.3C.*

**SECTION .0500 - TITLE V PROCEDURES**

**.0507 APPLICATION**

(a) Except for:

- (1) minor permit modifications covered under Rule .0515 of this Section,
- (2) significant modifications covered under Rule .0516(c) of this Section, or
- (3) permit applications submitted under Rule .0506 of this Section,

the owner or operator of a source shall have one year from the date of beginning of operation of the source to file a complete application for a permit or permit revision. However, the owner or operator of the source shall not begin construction or operation until he has obtained a construction and operation permit pursuant to Rule .0501(c) or (d) and Rule .0504 of this Section.

(b) The application shall include all the information described in 40 CFR 70.3(d) and 70.5(c), including a list of insignificant activities exempted because of size or production rate under Rule .0102(b)(2) of this Subchapter, but not including insignificant activities exempted because of category under Rule .0102(b)(1) of this Subchapter. The application form shall be certified by a responsible official for truth, accuracy, and completeness. In the application submitted pursuant to this Rule, the applicant may attach copies of applications submitted pursuant to Section .0400 of this Subchapter or 15A NCAC 2D .0530 or .0531, provided the information in those applications contains information required in this Section and is current, valid, and complete.

(c) Application for a permit, permit revision, or permit

renewal shall be made in accordance with Rule .0104 of this Subchapter on official forms of the Division and shall include plans and specifications giving all necessary data and information as required by the application form. Whenever the information provided on these forms does not describe the source or its air pollution abatement equipment to the extent necessary to evaluate the application, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the source and its air pollution abatement equipment.

(d) Along with filing a complete application form, the applicant shall also file the following:

- (1) for a new facility or an expansion of existing facility, a consistency determination in accordance with G.S. 143-215.108(f) that:
    - (A) bears the date of receipt entered by the clerk of the local government, or
    - (B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;
  - (2) for a new facility or modification of an existing facility, a written description of current and projected plans to reduce the emissions of air contaminants by source reduction and recycling in accordance with G.S. 143-215.108(g); the description shall include:
    - (A) for an existing facility, a summary of activities related to source reduction and recycling and a quantification of air emissions reduced and material recycled during the previous year and a summary of plans for further source reduction and recycling; or
    - (B) for a new facility, a summary of activities related to and plans for source reduction and recycling; and
  - (3) if required by the Director, information showing that:
    - (A) The applicant is financially qualified to carry out the permitted activities, or
    - (B) The applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and state environmental laws and rules.
- (e) The applicant shall submit copies of the application package as follows:
- (1) for sources subject to the requirements of 15A NCAC 2D .0530, .0531, or .1200, six copies plus one additional copy for each affected state that the Director has to notify;
  - (2) for sources not subject to the requirements of 15A NCAC 2D .0530, .0531, or .1200, four copies plus one additional copy for each affected state that the Director has to notify.

The Director may at any time during the application process request additional copies of the complete application package from the applicant.

(f) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit, as soon as possible, such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date he filed a complete application but prior to release of a draft permit.

(g) The applicant shall submit the same number of copies of additional information as required for the application package.

(h) The submittal of a complete permit application shall not affect the requirement that any facility have a preconstruction permit under 15A NCAC 2D .0530, .0531, or .0532 or under Section .0400 of this Subchapter.

(i) The Director shall give priority to permit applications containing early reduction demonstrations under Section 112(i)(5) of the federal Clean Air Act. The Director shall take final action on such permit applications as soon as practicable after receipt of the complete permit application.

(j) With the exceptions specified in Rule .0203 (i) of this Subchapter, a non-refundable permit application processing fee shall accompany each application. The permit application processing fees are defined in Section .0200 of this Subchapter. Each permit or renewal application is incomplete until the permit application processing fee is received.

(k) The applicant shall retain for the duration of the permit term one complete copy of the application package and any information submitted in support of the application package.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.*

## **.0512 PERMIT SHIELD AND APPLICATION SHIELD**

### **(a) Permit Shield:**

(1) The Director shall place in a permit issued under this Section a permit term or condition (a permit shield) stating that compliance with the conditions of the permit shall be deemed compliance with applicable requirements specifically identified in the permit in effect as of the date of permit issuance, provided that:

- (A) Such applicable requirements are included and are specifically identified in the permit; or
- (B) The Director, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

- (2) A permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.
- (3) A permit shield shall not alter or affect:
  - (A) the power of the Commission, Secretary of the Department, or Governor under G.S. 143-215.3(a)(12) or EPA under Section 303 of the federal Clean Air Act;
  - (B) the liability of an owner or operator of a facility for any violation of applicable requirements prior to the effective date of the permit or at the time of permit issuance;
  - (C) the applicable requirements under Title IV; or
  - (D) the ability of the Director (or EPA under Section 114 of the federal Clean Air Act) to obtain information to determine compliance of the facility with its permit, this Section, or Subchapter 2D of this Chapter.
- (4) A permit shield shall not apply to any change made at a facility that does not require a permit revision.
- (5) A permit shield shall not extend to minor permit modifications made under Rule .0515 of this Section. ~~Section until the minor permit modification is approved by the Director and EPA; then the Director shall place a permit shield in the permit for the minor permit modification.~~

### **(b) Application Shield.**

- (1) Except as provided in Subparagraph (b)(2) of this Rule, if the applicant submits a timely and complete application for permit issuance (including for renewal), the facility's failure to have a permit under this Section shall not be a violation:
  - (A) unless the delay in final action is due to the failure of the applicant's timely submission of information as required or requested by the Director, or
  - (B) until the Director takes final action on the permit application.
- (2) Subparagraph (b)(1) of this Rule shall cease to apply if, subsequent to the completeness determination made under Rule .0507 of this Section, the applicant fails to submit by the deadline specified in writing by the Director, any additional information identified as being needed to process the application.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.*

## **.0514 ADMINISTRATIVE PERMIT AMENDMENTS**

(a) An "administrative permit amendment" means a permit revision that:

- (1) corrects typographical errors;
- (2) identifies a change in the name, address or tele-

phone number of any individual identified in the permit, or provides a similar minor administrative change at the facility;

(3) requires more frequent monitoring or reporting by the permittee;

(4) changes test dates or construction dates; dates provided that no applicable requirements are violated by the change in test dates or construction dates;

(5) moves terms and conditions from the State-enforceable only portion of a permit to the State-and-federal-enforceable portion of the permit; permit provided that terms and conditions being moved have become federally enforceable through Section 110, 111, or 112 or other parts of the federal Clean Air Act;

(6) moves terms and conditions from the federal-enforceable only portion of a permit to the State-and-federal-enforceable portion of the permit;

(7) changes the permit number without changing any portion of the permit that is federally enforceable that would not otherwise qualify as an administrative amendment; or

(8) changes the State-enforceable only portion of the permit.

(b) In making administrative permit amendments, the Director:

(1) shall take final action on a request for an administrative permit amendment within 60 days after receiving such request;

(2) may make administrative amendments without providing notice to the public or any affected State(s) provided he designates any such permit revision as having been made pursuant to this Rule, and

(3) shall submit a copy of the revised permit to EPA.

(c) The permittee may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(d) Upon taking final action granting a request for an administrative permit amendment, the Director shall allow coverage by the permit shield under Rule .0512 of this Section for the administrative permit amendments made.

(e) Administrative amendments for sources covered under Title IV shall be governed by rules in Section .0400 of this Subchapter.

*Authority* G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

#### **.0515 MINOR PERMIT MODIFICATIONS**

(a) The procedures set out in this Rule may be used for permit modifications when the modifications:

- (1) do not violate any applicable requirement;
- (2) do not involve significant changes to existing monitoring, reporting, or recordkeeping require-

ments in the permit;

(3) do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(4) do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the facility has assumed to avoid an applicable requirement to which the facility would otherwise be subject. Such terms and conditions include:

(A) a federally enforceable emissions cap assumed to avoid an applicable requirement under any provision of Title I of the federal Clean Air Act; or

(B) an alternative emissions limit approved as part of an early reduction plan submitted pursuant to Section 112(i)(5) of the federal Clean Air Act;

(5) are not modifications under any provision of Title I of the federal Clean Air Act; and

(6) are not required to be processed as a significant modification under Rule .0516 of this Section.

(b) In addition to the items required under Rule .0505 of this Section, an application requesting the use of the procedures set out in this Rule shall include:

(1) an application form including:

(A) a description of the change,  
(B) the emissions resulting from the change, and  
(C) identification of any new applicable requirements that will apply if the change occurs;

(2) a list of the facility's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the thresholds set out under Subparagraphs (c)(1) through (3) of this Rule;

(3) the applicant's suggested draft permit;

(4) certification by a responsible official that the proposed modification meets the criteria for using the procedures set out in this Rule and a request that these procedures be used; and

(5) complete information for the Director to use to notify EPA and affected States.

(c) The Director shall use group processing for minor permit modifications processed under this Rule. The Director shall notify EPA and affected States of the requested permit revisions under this Rule and shall provide the information specified in Rule .0522 of this Section on a quarterly basis. If the aggregated emissions from all pending minor permit modifications equal or exceed:

- (1) 10 percent of the emissions allowed for the source for which the change is requested,
- (2) 20 percent of the applicable definition of major

facility, or

- (3) five tons per year,

then the Director shall notify EPA and affected States within five business days of the requested permit revision under this Rule and provide the information specified in Rule .0522 of this Section.

(d) Within 90 days after receiving a complete application that causes the thresholds in Paragraphs (c)(1), (2), or (3) of this Rule to be exceeded or 15 days after the end of EPA's 45-day review period, whichever is later, the Director shall:

- (1) issue the permit modification as proposed;
- (2) deny the permit modification application;
- (3) determine that the requested modification does not qualify for the procedures set out in this Rule and should therefore, be processed under Rule .0516 of this Section;
- (4) revise the draft permit modification and transmit the proposed permit to EPA.

(d)(e) If the thresholds in Paragraphs (c)(1), (2), and (3) of this Rule are not exceeded, the Director shall, within Within 180 days after receiving a completed application for a permit modification or 15 days after the end of EPA's 45-day review period, whichever is later, the Director shall:

- (1) issue the permit modification as proposed;
- (2) deny the permit modification application;
- (3) determine that the requested modification does not qualify for the procedures set out in this Rule and should therefore, be processed under Rule .0516 of this Section;
- (4) revise the draft permit modification and transmit the proposed permit to EPA.

(e)(f) The permit applicant may make the change proposed in his minor permit modification application immediately after filing the completed application with the Division. After the applicant makes the change, the facility shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions until the Director takes one of the final actions specified in Paragraph (d)(1) through (d)(4) of this Rule. Between the filing of the permit modification application and the Director's final action, the facility need not comply with the existing permit terms and conditions it seeks to modify. However, if the facility fails to comply with its proposed permit terms and conditions during this time period, the Director may enforce the terms and conditions of the existing permit that the applicant seeks to modify.

(f)(g) The permit shield allowed under Rule .0512 of this Section shall not extend to minor permit modifications, modifications, until the minor permit modification is approved by the Director and EPA; then the Director shall place a permit shield in the permit for the minor permit modification.

(g)(h) If the State-enforceable only portion of the permit is revised, the procedures in Section .0300 of this Subchapter shall be followed.

(h)(i) The proceedings shall affect only those parts of the

permit related to the modification.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

#### **.0517 REOPENING FOR CAUSE**

(a) A permit shall be reopened and revised under the following circumstances:

- (1) Additional applicable requirements become applicable to a facility with remaining permit term of three or more years;
- (2) Additional requirements (including excess emissions requirements) become applicable to a source covered by Title IV (Upon approval by EPA, excess emissions offset plans shall be deemed to be incorporated into the permit.);
- (3) The Director or EPA finds that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or
- (4) The Director or EPA determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(b) Any permit reopening under Subparagraph (a)(1) of this Rule shall be completed or a revised permit issued within 18 months after the applicable requirement is promulgated.

- (1) after submittal of a complete application if an application is required, or
- (2) after the applicable requirement is promulgated if no application is required.

No reopening is required if the effective date of the requirement is after the expiration of the permit term unless the term of the permit was extended pursuant to Rule .0513(c) of this Section.

(c) Except for the State-enforceable only portion of the permit, the procedures set out in Rule .0507, .0521, or .0522 of this Section shall be followed to reissue a permit that has been reopened under this Rule. If the State-enforceable only portion of the permit is reopened, the procedures in Section .0300 of this Subchapter shall be followed. The proceedings shall affect only those parts of the permit for which cause to reopen exists.

(d) The Director shall notify the permittee at least 60 days in advance of the date that the permit is to be reopened, except in cases of imminent threat to public health or safety the Director may notify the permittee less than 60 days before reopening the permit. The notice shall explain why the permit is being reopened.

(e) Within 90 days, or 180 days if EPA extends the response period, after receiving notification from EPA that it finds that a permit needs to be terminated, modified, or revoked and reissued, the Director shall send to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

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**N**otice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rules cited as 15A NCAC 10B .0106, .0123; 10I .0002.

**Proposed Effective Date:** April 1, 1997 for 15A NCAC 10B .0123 and 10I .0002; July 1, 1997 for 15A NCAC 10B .0106.

**A Public Hearing will be conducted at 10:00 a.m. on July 31, 1996 at the Third Floor Conference Room, Archdale Building, 512 N. Salisbury St., Raleigh, NC 27604.**

**Reason for Proposed Action:**

**15A NCAC 10B .0106** - to regulate/restrict taking possession and disposal of wildlife taken for depredation or accidentally.

**15A NCAC 10B .0123** - to regulate/restrict import, possession, sale, release, etc. of the tongueless or african clawed frog.

**15A NCAC 10I .0002** - to regulate/restrict taking, purchase, importation, sale and trade, etc. of endangered/threatened and special concern species.

**Comment Procedures:** Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from July 15, 1996 through August 14, 1996. Such written comments must be delivered or mailed to the North Carolina Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of state or local government funds. These Rules do not have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.

## **CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY**

### **SUBCHAPTER 10B - HUNTING AND TRAPPING**

#### **SECTION .0100 - GENERAL REGULATIONS**

##### **.0106 WILDLIFE TAKEN FOR DEPREDACTION OR ACCIDENTLY**

**(a) Depredation Permit:**

(1) **Endangered or Threatened Species.** No permit shall be issued to take any endangered or threatened species of wildlife listed under 15A NCAC 10I by reason of depredations to property. An individual may take an endangered or threatened

species in immediate defense of his own life or of the lives of others without a permit. Any endangered or threatened species which may constitute a demonstrable but non-immediate threat to human safety shall be reported to a federal or state wildlife enforcement officer, who, upon verification of the report, may take or remove the specimen as provided by 15A NCAC 10I .0002. **Other Wildlife Species.** Except as provided in Subparagraph (1) of this Paragraph, the Executive Director or an agent of the Wildlife Resources Commission may, upon application of a landholder and after such investigation of the circumstances as he may require, issue a permit to such landholder to take any species of wildlife which is or has been damaging or destroying his property provided there is evidence of substantial property damage. No permit may be issued for the taking of any migratory birds and other federally protected animals unless a corresponding valid U.S. Fish and Wildlife Service depredation permit has been issued. The permit shall name the species allowed to be taken and, in the discretion of the Executive Director or an agent, may contain limitations as to age, sex or any other condition within the species so named. The permit may be used only by the landholder or another person named on the permit.

**(3) Wildlife Damage Control Agents:** Upon satisfactory completion of a Wildlife Resources Commission approved training and satisfactory demonstration of a knowledge of wildlife laws and safe, humane wildlife handling techniques, an individual may apply to the Wildlife Resources Commission (Commission) to become a Wildlife Damage Control Agent (WDCA). Those persons approved as agents by the Commission may then issue depredation permits to landholders and list themselves as a second party to provide the control service. WDCA's may not issue depredation permits for big game animals, bats, or species listed as endangered, threatened or special concern under Rules 10I .0003, .0004 and .0005 of this Chapter. WDCA's must report to the Wildlife Resources Commission the number and disposition of animals taken, by county, annually. Records must be available for inspection by a Wildlife Enforcement officer at any time during normal business hours. WDCA status may be revoked at any time by the Executive Director when there is evidence of violations of wildlife laws, failure to report, or inhumane treatment of animals by the WDCA. WDCA's may not charge for the permit, but may charge for their investigations and control services. In order to maintain a knowledge of current laws, rules, and techniques, WDCA's must renew their agent status every

three years by showing proof on having attended at least one Wildlife Commission approved training course provided for the purpose of reviewing and updating information on wildlife laws and safe, humane wildlife handling techniques within the previous 12 months.

(b) Term of Permit. Each depredation permit issued by the Executive Director or an agent shall have entered thereon a date or time of expiration after which date or time the same shall become invalid for any purpose, except as evidence of lawful possession of any wildlife that may be retained thereunder.

(c) Manner of Taking:

(1) Taking Without a Permit. Wildlife taken without a permit while committing depredations to property may, during the open season on the species, be taken by the landholder by any lawful method. During the closed season such depredating wildlife may be taken without a permit only by the use of firearms.

(2) Taking With a Permit. Wildlife taken under a depredation permit may be taken only by the method or methods specifically authorized by the permit. When trapping is authorized, in order to limit the taking to the intended purpose, the permit may specify a reasonable distance from the property sought to be protected, according to the particular circumstances, within which the traps must be set. The Executive Director or agent may also state in a permit authorizing trapping whether or not bait may be used and the type of bait, if any, that is authorized. In addition to any trapping restrictions that may be contained in the permit the method of trapping must be in accordance with the requirements and restrictions imposed by G.S. 113-291.6 and other local laws passed by the General Assembly. No depredation permit shall authorize the use of poisons or pesticides in taking wildlife except in accordance with the provisions of the North Carolina Pesticide Law of 1971, the Structural Pest Control Act of 1955, and Article 22A of Chapter 113 of the General Statutes of North Carolina. No depredation permit shall authorize the taking of wildlife by any method by any landholder upon the lands of another.

(3) Intentional Wounding. It is unlawful for any landholder, with or without a depredation permit, intentionally to wound a wild animal in a manner so as not to cause its immediate death as suddenly and humanely as the circumstances permit.

(d) Disposition of Wildlife Taken:

(1) Generally. Except as provided by the succeeding Subparagraphs of this Paragraph, any wildlife killed accidentally or without a permit while committing depredations shall be buried or otherwise disposed of in a safe and sanitary manner on

the property. Wildlife killed under a depredation permit may be transported to an alternate disposal site if desired. Anyone in possession of carcasses of animals being transported under a depredation permit must have the depredation permit in their possession. Except as provided by the succeeding Subparagraphs of (d)(2) through (6) of this Rule, all wildlife killed under a depredation permit must be buried or otherwise disposed of in a safe and sanitary manner.

(2) Deer. The edible portions of up to five deer may be retained by the landholder for consumption but must not be transported from the property where the depredations took place without a valid depredation permit. An enforcement officer, if so requested by the permittee, shall provide the permittee a written authorization the use by a charitable organization of the edible portions of the carcass. The nonedible portions of the carcass, including head, hide, feet, and antlers, shall be disposed of as specified in Subparagraph (1) of this Paragraph or turned over to a wildlife enforcement officer for disposition. When a deer is accidentally killed on a road or highway by reason of collision with a motor vehicle, the law enforcement officer who investigates the accident shall, upon request of the operator of the vehicle, provide such operator a written permit authorizing him to possess and transport the carcass of such deer for his personal and lawful use, including delivery of such carcass to a second person for his private use or the use by a charitable organization upon endorsement of such permit to such person or organization by name and when no money or other consideration of value is received for such delivery or endorsement.

(3) Fox. Any fox killed accidentally ~~by a dog or dogs, motor vehicle, or otherwise~~ shall be disposed of in the appropriate manner as provided by Subparagraph (1) or (6) of this Paragraph. Any fox killed under a depredation permit may be disposed of in the same manner or, upon compliance with the fur tagging requirements of 15A NCAC 10B .0400, the carcass or pelt thereof may be sold to a licensed fur dealer. Any live fox taken under a depredation permit may be sold to a licensed controlled hunting preserve for fox in accordance with G.S. 113-273(g).

(4) Furbearing Animals. The carcass or pelt of any furbearing animal killed during the open season for taking such furbearing animal either accidentally or for control of depredations to property, whether with or without a permit, may be sold to a licensed fur dealer provided that the person offering such carcass or pelt for sale has a valid hunting or trapping license, provided further that, bobcats and otters may only be sold upon compli-

ance with any required fur tagging requirement set forth in 15A NCAC 10B .0400.

- (5) Animals Taken Alive. Wild animals in the order Carnivora and beaver shall be humanely euthanized either at the site of capture or at an appropriate facility designed to humanely handle the euthanasia or released on the property where captured. Animals transported or held for euthanasia must be euthanized within 12 hours of capture. Anyone in possession of live animals being transported for relocation or euthanasia under a depredation permit must have the depredation permit in their possession.
- (6) A person killing a wild bird or wild animal accidentally with a motor vehicle or finding a dead wild bird or wild animal which was killed accidentally may possess that wild bird or wild animal for a period not to exceed 10 days for the purpose of delivering it to a licensed taxidermist for preparation. The licensed taxidermist may accept the wild bird or wild animal after satisfying himself that the animal was killed accidentally. The taxidermist shall certify and record the circumstances of acquisition as determined by his injury. Licensed taxidermists shall keep accurate records of each wildlife specimen received pursuant to the Rule as required by 15A NCAC 10H .1003 of this Chapter. Upon delivery of the finished taxidermy product to the person presenting the animal, the taxidermist shall give the person a receipt in the form required by the Wildlife Resources Commission indicating the species, date of delivery, circumstances of initial acquisition and any other information that may be required on the form. A copy of this receipt shall be filed with the Wildlife Resources Commission within 10 days of the date of delivery of the mounted specimen. The receipt shall serve as the non-transferable permit for continued possession of the mounted specimen and shall be retained by the person for as long as the mounted specimen is kept. Mounted specimens possessed pursuant to this Rule may not be sold and, if such specimens are transferred by gift or inheritance, the new owner must apply for a new permit and must submit the written receipt originally obtained from the taxidermist to document the legality of possession. This provision does not allow possession of accidentally killed raptors; migratory birds; species listed as endangered, threatened, or of special concern under Rules 10I .0003, .0004, and .0005 of this Chapter; bear or wild turkey.

(e) Reporting Requirements. Any landholder who kills a deer, bear or wild turkey under a currently valid depredation permit shall report such kill on the form provided with the permit and mail the form immediately upon the expiration date to the Wildlife Resources Commission. The

killing and method of disposition of every game animal and game bird, every furbearing animal, and every nongame animal or nongame bird for which there is no open season, when killed for committing depredations to property, without a permit, shall be reported to the Wildlife Resources Commission within 24 hours following the time of such killing, except that when the carcass or pelt of a fox, killed under a depredation permit, or of a furbearing animal, killed with or without a permit, is lawfully sold to a licensed fur dealer in this State the fur dealer is required to report the source of acquisition and no report is required of the seller.

Authority G.S. 113-134; 113-273; 113-274; 113-291.4; 113-291.6; 113-300.1; 113-300.2; 113-307; 113-331; 113-333; 113-334(a); 113-337.

#### **.0123 POSSESSION OF CERTAIN SPECIES OF WILDLIFE RESOURCES**

It is unlawful for any individual to import, transport, export, purchase, possess, or sell any species of Tongueless or African Clawed Frog (Xenopus spp.) or to stock or release them in the public or private waters or lands of North Carolina, except that they may be possessed in indoor facilities of scientific and educational institutions by as authorized under permit issued by the Executive Director pursuant to G.S. 113-274(c)(4) and containing such conditions and limitations as he deems necessary, and subject to limitations as specified in this Rule:

- (1) Importation, possession, sales, transportation, and exportation will be allowed under permit by retail and wholesale establishments whose primary function is providing scientific supplies for research; provided that they must be possessed in indoor facilities; and that all transportation of specimens provides adequate safeguards against accidental escape; and that sale or transfer is permitted only as listed in Item (2) of this Rule. Written applications for permits shall include plans for holding, transportation, advertisement, and sale in such detail as to allow a determination of the safeguards provided against accidental escape and sales to unauthorized individuals.
- (2) Purchase, importation, and possession of this species within North Carolina will be allowed under permit only by state and federal governmental agencies, corporate research entities, and research institutions; provided that sales are permitted to lawful out-of-state consumers; and, provided that they must be possessed in indoor facilities and that all transportation of specimens provides adequate safeguards against accidental escape; and that the agency's or institution's Animal Use and Care Committee has approved the research protocol for this species; and, further provided that no specimens may be stocked or released in the public or private waters or lands of North Carolina and may not be transferred to any

private individual.

Authority G.S. 113-134; 113-274; 113-292.

## SUBCHAPTER 10I - ENDANGERED AND THREATENED SPECIES

### .0002 PROTECTION OF ENDANGERED/THREATENED/SPECIAL CONCERN SPECIES

(a) No Open Season. There shall be no open season for taking any of the species listed as endangered in Rule .0003, threatened in Rule .0004 or, unless otherwise provided, as special concern in Rule .0005 of this Subchapter. Except as provided in Paragraphs (b), (c) and (e) of this Rule, it is unlawful to take or possess any of such species at any time.

(b) Permits. The executive director may issue permits to take an endangered, threatened, or special concern species for the purpose of scientific investigation relevant to perpetuation or restoration of said species or as a part of a commission-approved study or restoration effort.

(c) Taking Without a Permit:

(1) An individual may take an endangered, threatened, or special concern species in defense of his own life or the lives of others without a permit.

(2) A state or federal conservation officer or employee who is designated by his agency to do so may, when acting in the course of his official duties, take, possess, and transport endangered, threatened, or special concern species without a permit if the action is necessary to:

(A) aid a sick, injured, diseased or orphaned specimen;

(B) dispose of a dead specimen;

(C) salvage a dead specimen which may be useful for scientific study; or

(D) remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided the taking is done in a humane and noninjurious manner; the taking may involve injuring or killing endangered, threatened, or special concern species only if it is not reasonably possible to eliminate the threat by live-capturing and releasing the specimen unharmed, in a suitable habitat.

(d) Reporting. Any taking or possession of an endangered, threatened, or special concern species under Subsections (b) and (c) of this Rule is subject to applicable reporting requirements of federal law and regulations and the reporting requirements of the permit issued by the Executive Director or of 15A NCAC 10B .0106(e).

(e) Exception.

(1) Notwithstanding any other provisions of this Rule, processed meat and other parts of American alligators, which have been lawfully taken in a state in which there is an open season for harvest-

ing alligators, may be possessed, bought and sold when such products are marketed in packages or containers which are distinctly labeled to indicate the state in which they were taken and the identity, location, and lawful authority of the processor or distributor.

(2) Raptors listed as special concern species in Rule .0005 of this Subchapter may be taken from the wild for falconry purposes and for falconry propagation, provided that a valid North Carolina endangered species permit has been obtained as required in Paragraph (b) of this Rule.

(3) Captive-bred raptors listed as special concern species may be bought, sold, bartered or traded as provided in 50 C.F.R. 21.30 when marked as required under those regulations.

(4) Importation, possession, sales, transportation and exportation of species listed as special concern species in Rule .0005 of this Subchapter will be allowed under permit by retail and wholesale establishments whose primary function is providing scientific supplies for research; provided that the specimens were lawfully obtained from captive or wild populations outside of North Carolina; and that they must be possessed in indoor facilities; and that all transportation of specimens provides adequate safeguards against accidental escape; and that importation, possession and sale or transfer is permitted only as listed in this Subparagraph.

(A) A written application to the Commission is required for a permit to authorize importation, and possession for the purpose of retail or wholesale sale. The application shall identify the source of the specimens, and provide documentation of lawful acquisition. Applications for permits shall include plans for holding, transportation, advertisement, and sale in such detail as to allow a determination of the safeguards provided against accidental escape and sales to unauthorized individuals.

(B) Purchase, importation, and possession of special concern species within North Carolina will be allowed under permit to state and federal governmental agencies, corporate research entities, and research institutions; provided that sales are permitted to out of state consumers; and, provided that they must be possessed in indoor facilities and that all transportation of specimens provides adequate safeguards against accidental escape; and that the agency's or institution's Animal Use and Care Committee has approved the research protocol for this species; and, further provided that no specimens may be stocked or released in

the public or private waters or lands of North Carolina and may not be transferred to any private individual.

Authority G.S. 113-134; 113-291.2; 113-291.3; 113-292; 113-333.

\* \* \* \* \*

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rules cited as 15A NCAC 10B .0203, .0208 - .0209; 10D .0002, .0003.

Proposed Effective Date: July 1, 1997

Public Hearings will be conducted at 7:00 p.m. at the following locations and dates:

**Monday, August 12, 1996**

District 1  
Swain Auditorium  
Edenton, NC

**Monday, August 12, 1996**

District 6  
North Stanly High School  
Albemarle, NC

**Monday, August 12, 1996**

District 9  
Jackson County Justice Center  
Sylva, NC

**Tuesday, August 13, 1996**

District 2  
Courthouse  
New Bern, NC

**Tuesday, August 13, 1996**

District 5  
Courthouse  
Graham, NC

**Tuesday, August 13, 1996**

District 8  
Civic Center Auditorium  
Morganton, NC

**Wednesday, August 14, 1996**

District 3  
Courthouse  
Nashville, NC

**Wednesday, August 14, 1996**

District 4  
Courthouse  
Elizabethtown, NC

**Wednesday, August 14, 1996**

District 7  
High School  
Elkin, NC

**Reason for Proposed Action:**

15A NCAC 10B .0203 - to regulate/restrict taking of white-tailed deer.

15A NCAC 10B .0208 - to regulate/restrict take of quail.

15A NCAC 10B .0209 - to regulate/restrict take of wild turkey (bearded only).

15A NCAC 10D .0002 - to regulate/restrict the use of game lands.

15A NCAC 10D .0003 - to regulate/restrict hunting on game lands.

**Comment Procedures:** Interested persons may present their views either orally or in writing at the hearings. In addition, the record of hearing will be open for receipt of written comments from July 15, 1996 through August 14, 1996. Such written comments must be delivered or mailed to the North Carolina Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of state or local government funds. These Rules do not have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.

**SUBCHAPTER 10B - HUNTING AND TRAPPING**

**SECTION .0200 - HUNTING**

**.0203 DEER (WHITE-TAILED)**

(a) Closed Season. All counties and parts of counties not listed under the open seasons in Paragraph (b) in this Rule shall be closed to deer hunting.

(b) Open Seasons (All Lawful Weapons)

(1) Male Deer With Visible Antlers. Male deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:

(A) Monday on or nearest October 15 through January 1 in all of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus\*, Craven, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Greene, Halifax, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond\*\*, Robeson, Sampson, Scotland\*\*, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties, and the following parts of counties:

- Cumberland: That part south of NC 24 or east of I-95;  
Harnett: That part west of NC 87;  
Moore\*\*: All of the county except that part north of NC 211 and west of US 1;  
\*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.  
\*\*See 15A NCAC 10D .0003(f)(51)(C) for seasons on Sandhills Game Land.
- (B) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in all of Alexander, Alleghany, Ashe, Catawba, Davie, Forsyth, Gaston, Iredell, Lincoln, Stokes, Surry, Watauga, Wilkes, and Yadkin counties.
- (C) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in all of Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Cleveland, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey counties.
- (D) Monday before Thanksgiving week through January 1 in all of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Granville, Guilford, Lee, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan, Stanly, and Union counties, and in the following parts of counties:  
Cumberland, That part north of NC 24 and west of I-95;  
Harnett, That part east of NC 87;  
Moore, That part north of NC 211 and west of US 1;
- (E) Monday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.
- (2) Deer of Either Sex. Except on Game Lands, deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in this Subparagraph (See 10D.0003 for either sex seasons on Game Lands):
- (A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the Monday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.
- (B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Monday on or nearest October 15 through January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.
- (C) Second Saturday in October for youth either sex deer hunting by permit only on a portion of Belews Creek Steam Station in Stokes County designated by agents of the Commission.
- (D) The second Saturday in December in all of Buncombe, Haywood, Henderson, Madison, Mitchell, Transylvania, and Yancey counties and the following parts of counties:  
Avery: That part south of the Blue Ridge Parkway.
- (E) Wednesday through Saturday of the week following Thanksgiving in all of Harnett, Hoke, Mecklenburg, and Tyrrell counties and in the following parts of counties:  
Camden: That part south of US-158.  
Cumberland: That part west of I-95.  
Dare: except the Outer Banks north of Whalebone.  
Richmond: That part east of a line formed by US 220 from the Montgomery County line to Rockingham and US 1 from Rockingham to the South Carolina line.  
Scotland: That part north of US 74.  
Wayne: That part north of US 70.
- (F) Wednesday of the week following Thanksgiving through Saturday of next succeeding week in all of Alamance, Cabarrus, Carteret, Caswell, Davidson, Durham, Greene, Guilford, Lee, Moore, Orange, Pamlico, Pasquotank, Person, Randolph, Rockingham, Rowan, Stanly, Union, Wake, Washington, and Wilson counties and in the following parts of counties:

- Camden: That part north of US-158  
Chowan: That part north of US 17 and west of NC 32.  
Columbus: That part west of US 74, SR 1005, and SR 1125.  
Cumberland: That part east of I-95.  
Currituck: All of the county except the Outer Banks.  
Johnston: That part north of US 70 or west of I-95.  
Nash: That part south of US 64.  
Richmond: That part east of Little River and west of a line formed by US 220 from the Montgomery County line to Rockingham and US 1 from Rockingham to the South Carolina line.  
Robeson: That part east of I-95.  
Wayne: That part south of US 70.
- (G) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in that part of Buncombe County east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of SR 3503, NC 146 and SR 3501.
- (H) Wednesday of the week following Thanksgiving through January 1 in all of Anson, Beaufort, Bertie, Bladen, Brunswick, Chat-ham, Craven, Duplin, Edgecombe, Franklin, Gates, Granville, Halifax, Hertford, Hyde, Jones, Lenoir, Martin, Montgomery, Northampton, Onslow, Pender, Perquimans, Pitt, Sampson, Vance, and Warren counties, and in the following parts of counties:  
Chowan: That part south of US 17 or east of NC 32.  
Columbus: That part east of a line formed by US 74, SR 1005, and SR 1125.  
Dare: That part of the Outer Banks north of Whalebone.  
Johnston: That part south of US 70 and east of I-95.  
Nash: That part north of US 64.  
New Hanover: That part north of US 74.  
Richmond: That part west of Little River.
- (I) The second Wednesday after Thanksgiving through the third Saturday after Thanksgiving in all of Alexander, Alleghany, Ashe, Cleveland, Davie, Forsyth, Iredell, Rutherford, Stokes, Surry, Wilkes and Yadkin counties.
- (J) The third Friday after Thanksgiving through the third Saturday after Thanksgiving in all of, Burke, Caldwell, Catawba, Gaston, Lincoln, McDowell, Polk, and Watauga, counties.
- (K) In those counties or parts of counties listed in Paragraph (b) (2) (H), two antlerless deer may be taken during that part of the regular gun season in which no other either sex season is open and shall be tagged with the Antlerless deer tag or the Bonus Antlerless deer tag.
- (L) In those counties or parts of counties listed in Part (b)(2)(F), one antlerless deer may be taken during that part of the regular gun season in which no other either-sex season is open and shall be tagged with the Antlerless deer tag.
- (M) In Alexander, Alleghany, Ashe, Davie, Forsyth, Iredell, Stokes, Surry, Wilkes, and Yadkin counties, one antlerless deer may be taken during that part of the regular gun season or that part of the muzzle-loading season in which no other either-sex season is open and shall be tagged with the Antlerless deer tag.
- (c) Open Seasons (Bow and Arrow)
- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow during the following seasons:
- (A) Monday on or nearest September 10 to the fourth Saturday thereafter in the counties and parts of counties having the open season for male deer specified by Part (A) of Subparagraph (b)(1) of this Rule, except on the Sandhills Game Land and the area known as the Outer Banks in Currituck County.
- (B) Monday on or nearest September 10 to the second Saturday before Thanksgiving in the counties and parts of counties having the open seasons for male deer specified by Part (B) of Subparagraph (b)(1) of this Rule.
- (C) Monday on or nearest September 10 to the fourth Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving in the counties and parts of counties having the open seasons for male deer specified by Part (C) of Subparagraph (b)(1) of this Rule.
- (D) Monday on or nearest September 10 to the third Saturday before Thanksgiving in the counties and parts of counties having the open season for male deer specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.
- (2) Restrictions
- (A) Dogs may not be used for hunting deer during the bow and arrow season.
- (B) It is unlawful to carry any type of firearm

- while hunting with a bow during the bow and arrow deer hunting season.
- (C) Only bows and arrows of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.
- (d) Open Seasons (Muzzle-Loading Rifles and Shotguns)
- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with muzzle-loading firearms (except that bow and arrow may be used on designated and posted game land Archery Zones) during the following seasons:
- (A) Monday on or nearest October 8 to the following Saturday in the counties and parts of counties having the open seasons for male deer specified by Items (A) and (C) of Subparagraph (b)(1) of this Rule, except on Sandhills Game Land and the area known as the Outer Banks in Currituck County.
- (B) Monday to Saturday of the week preceding Thanksgiving week in the counties and parts of counties having the open seasons for male deer specified by Item (B) of Subparagraph (b)(1) of this Rule.
- (C) Monday to Saturday of the second week before Thanksgiving week in the counties and parts of counties having the open season for male deer specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.
- (2) Restrictions
- (A) Deer of either sex may be taken during muzzle-loading firearms season in and east of the following counties: Rutherford, McDowell, Burke, Caldwell, Wilkes, and Ashe. Deer those counties or parts of counties listed in Parts (A) and (D) of Subparagraph (b)(1) of this Rule and deer of either sex may be taken on the last day of muzzle-loading firearms season in all other counties, those counties or parts of counties listed in Part (B) and (C) of Subparagraph (b)(1) of this Rule.
- (B) Dogs may not be used for hunting deer during the muzzle-loading firearms seasons.
- (C) Pistols may not be carried while hunting deer during the muzzle-loading firearms seasons.
- (e) Except in areas described in Part (b)(1)(A) of this Rule, the The daily bag limit shall be two and the possession limit five, three one of which shall be antlerless. The season limit shall be five, three one of which shall be antlerless. In areas described in Part (b)(1)(A) of this Rule, the daily bag limit shall be two and the possession limit five, one of which shall be antlerless. The season limit in

these areas shall be five, one of which shall be antlerless. In those areas listed in Part (b)(2)(H) of this Rule, except on Game Lands, one additional antlerless deer may be taken provided it is tagged with the Bonus Antlerless deer tag. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin. The antlerless bag limits described above do not apply to antlerless deer harvested in areas covered in the Deer Management Assistance Program as described in G.S. 113-291.2(e). Individual daily antlerless bag limits on these areas shall be determined by the number of special tags, issued by the Division of Wildlife Management as authorized by the Executive Director, that shall be in the possession of the hunter. Season antlerless bag limits shall be set by the number of tags available. All antlerless deer harvested on these areas, regardless of the date of harvest, shall be tagged with these special tags but do not have to be tagged with Big Game Tags provided with the hunting license.

(f) Kill Reports. The carcass of each deer shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.

Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2.

#### .0208 QUAIL

(a) The open season for quail shall be the Saturday next preceding Thanksgiving through to the 15th last day of February.

(b) The daily bag Limit shall be eight per day and the possession limit shall be 16 per day. There shall be no season limit.

Authority G.S. 113-134; 113-291.2.

#### .0209 WILD TURKEY (BEARDED TURKEYS ONLY)

(a) Open Season shall be from the: Second Saturday in April to Saturday of the fourth week thereafter on bearded turkeys in the following counties: Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Caswell, Catawba, Cherokee, Clay, Davie, Forsyth, Gates, Graham, Harnett, Haywood, Henderson, Hertford, Jackson, Macon, Madison, McDowell, Mitchell, Montgomery, Onslow, Orange, Person, Polk, \*\*Richmond, Rockingham, Rutherford, \*\*Scotland, Stokes, Surry, Swain, Transylvania, Watauga, Wilkes, Yadkin, Yancey and in the following portions of counties:

Alamance: All of the county except that part south of I-85 and west of NC 87.

Anson: That part east of US 52 and north of US 74 and that part east of NC 145 and south of US 74.

Avery: That part west of US 19E.

\*\*Bertie: That part west of a line formed by NC 45 from the Hertford County line to Colerain, NC

42 to Powellsburg, US 13 to US 17 South, US 17 South to SR 1500, SR 1500 to NC 308, and NC 308 to the Washington County line.

\*\*Bladen: All of the county except that part east of NC 53 and north of US 701 and that part west of NC 87 and SR 1730. That part south of US 701 and east of NC 87 or SR 1730.

Brunswick: That part north of US 74-76 or east of NC 133.

Burke: That part north of I-40 and west of NC 18 and NC 181.

Carteret: That part west of US 70 and north of NC 24.

Chatham: That part north of US 64 and west of SR 1008.

Chowan: That part south of US-17.

Cleveland: That part west of NC 18.

Columbus: That part north of NC 87.

Craven: That part east of US 17, south of the Neuse River and west of Clubfoot Creek and the Harlowe Canal; and that part north of the Neuse River, south of a line formed by US 17 and US 17 Business, and east of a line formed by SR 1440 and SR 1441.

Cumberland: That part west of NC 53 or I-95.

Davidson: That part south of I-85

Durham: That part west of US 501.

Granville: All of the county except that part west of a line formed by SR 1126 from the county line to the intersection of SR 1004 then west on SR 1004 to the intersection of SR 1112 then east on SR 1112 to NC 56 then east on NC 56 to I-85 then south on I-85 to the county line.

\*\*Halifax: Starting at the Northampton County Line, that part east and north of a line formed by I-95, NC 903 and US 301.

Hoke: That part south and west of NC 211.

Hyde: Starting at the Tyrrell County line, that part west of a line formed by NC 94, US 264 West, SR 1124 to Judges Quarter then Quarter Canal to Juniper Bay.

Iredell: That part north of US 70.

Johnston: That part south of US 70 and I-95 and east of US 701.

Jones: Starting at the Craven County line, that part south of a line formed by US-17, SR 1002, and SR 1306.

\*\*Martin: That part north of a boundary formed by US 64 from the Washington County line to Williamston, north of NC 125 from Williamston to the junction with NC 142, and north of NC 142 to the Edgecombe County line.

\*\*Moore: That part south of NC 211.

New Hanover: Starting at the Brunswick County line, that part north and west of a line formed by NC-133 and SR 1002.

Northampton: That part south of a boundary

formed by US 158 from the Halifax County line to Jackson, NC 305 from Jackson to Rich Square, US 258 from Rich Square to NC 308, and NC 308 to the Bertie County line and that part south of NC 186, east of SR 1341, and north of SR 1333 and SR 1351.

\*\*Pender: Starting at the Sampson County line, that part south and west of a line formed by US 421, NC 210, and US-17 South; and starting at the Onslow county line, that part south of NC 53, east of the Northeast Cape Fear River, and north of the northern boundary of Holly Shelter Game Land and US 17.

Perquimans: Starting at the Pasquotank County line, that part south of a line formed by US-17, US-17 Business, and SR 1110.

Rowan: That part east of US 52.

Union: That part south of NC 74 and west of NC 207.

Wayne: That part south of US-70 and east of US-117.

Yancey: All of the county except that part north of US 19E and east of NC 197.

\*\*The Sandhills Game Land in Richmond, Scotland, and Moore Counties, the Bladen Lakes State Forest Game Lands in Bladen County, the Northeast Cape Fear Wetlands Game Lands in Pender County, and the Roanoke River Wetlands in Bertie, Halifax, and Martin Counties are closed to turkey hunting except by holders of special permits authorizing turkey hunting as provided in G.S. 113-264(d).

(b) Bag Limits shall be:

- (1) daily, one;
- (2) possession, two;
- (3) season, two.

(c) Dogs Prohibited. It is unlawful to use dogs for hunting turkeys.

(d) Kill Reports. The carcass of each wild turkey shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.

Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.2.

## SUBCHAPTER 10D - GAME LANDS REGULATIONS

### .0002 GENERAL REGULATIONS REGARDING USE

(a) Trespass. Entry on game lands for purposes other than hunting, trapping or fishing shall be as authorized by the landowner and there shall be no removal of any plants or parts thereof, or other materials, without the written authorization of the landowner. Travel is restricted, except by authorized personnel, to direct access from SR 2074 to the established waterfowl viewing stands on Cowan's Ford Waterfowl Refuge. The Wildlife Resources Commission

may designate areas on game lands as either an Archery Zone, Safety Zone or Restricted Zone. On Commission-owned game lands, entry for any recreational use requires a Game Land License.

- (1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting only.
- (2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land.
- (3) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission.
- (4) Establishment of Archery and Restricted Zones. The Commission shall conduct a public input meeting in the area where the game land is located before establishing any archery or restricted zone. After the input meeting the public comments shall be presented to an official Commission meeting for final determination.

(b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any game land by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) Possession of Hunting Devices. It is unlawful to possess a firearm or bow and arrow on a game land at any time except during the open hunting seasons or hunting days for game birds or game animals, other than fox, thereon unless said device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on field trial areas and on target shooting areas designated by the landowner, and possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition may be carried as side arms on game lands at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons and by individuals training dogs during closed season without field trial authorization. This Rule shall not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar, wild turkey), no person shall possess a shotgun shell

containing larger than No. 4 shot or any rifle or pistol larger than a .22 caliber rimfire while on a game land, except that shotgun shells containing any size steel or non-toxic shot may be used while waterfowl hunting. Furthermore, only shotguns with any size shot may be possessed during the big game season for turkey. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner-Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting.

(d) Game Lands License

(1) Hunting and Trapping

(A) Requirement. Except as provided in Part (B) of this Subparagraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities shall have in his possession a game lands license in addition to the appropriate hunting or trapping licenses.

(B) Exceptions

- (i) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.
- (ii) The resident and nonresident sportsman's licenses include game lands use privileges.
- (iii) Judges and nonresidents participating in field trials under the circumstances set forth in Subsection (e) of this Rule may do so without the game lands license.
- (iv) On the game lands described in Rule .0003(e)(2) of this Subchapter the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(2) Trout Fishing. Any person 16 years of age or over, including an individual fishing with natural bait in the county of his residence, entering a game land for the purpose of fishing in designated public mountain trout waters located thereon shall have in his possession a game lands license in addition to the regular fishing license and special trout license. The game lands license is not required to fish in that part of Slick Rock Creek which coincides with the Tennessee State line, or when fishing from boat on Calderwood Lake. The resident and nonresident sportsman's licenses and short-term comprehensive fishing licenses include trout fishing privileges on game lands.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request

from the sponsoring organization, has been officially authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident participating therein may do so without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence. Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the commission's agent an application to use the area and facility accompanied by the facility use fee computed at the rate of one hundred dollars (\$100.00) for each scheduled day of the trial. The total facility use fee shall cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee shall be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of twenty-five dollars (\$25.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the specific approval so obtained. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the

dates of the special hunts.

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land;
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;
- (3) in posted "safety zones" located on any game land;
- (4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (5) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;
- (6) on the Hunting Creek Swamp Waterfowl Refuge.

On those areas of state-owned land known collectively as the Roanoke River Wetlands controlled trapping is allowed under a permit system.

(g) Use of Weapons. No person shall hunt or discharge a firearm or bow and arrow from a vehicle, or within 200 yards of any building or designated camping area, or within, into, or across a posted "safety zone" on any game land. No person shall hunt with or discharge a firearm within, into, or across a posted "restricted zone" on any game land.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on any game land except on those roads constructed, maintained and opened for vehicular travel and those trails posted for vehicular travel, unless such person:

- (1) is a participant in scheduled bird dog field trials held on the Sandhills Game Land; or
- (2) holds a Disabled Access Program Permit as described in (n) below and is abiding by the rules described in that paragraph.

(i) Camping. No person shall camp on any game land except on an area designated by the landowner for camping.

(j) Swimming. Swimming is prohibited in the lakes located on the Sandhills Game Land.

(k) Disabled Sportsman Program. In order to qualify for special hunts for disabled sportsmen listed in 15A NCAC 10D .0003 an individual shall have in their possession a Disabled Sportsman permit issued by the Commission. In order to qualify for the permit, the applicant shall provide medical certification of one or more of the following disabilities:

- (1) amputation of one or more limbs;
- (2) paralysis of one or more limbs;
- (3) dysfunction of one or more limbs rendering the person unable to perform the task of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane; disease or injury or defect confining the person to a wheelchair, walker, or crutches; or
- (4) legal deafness, meaning the inability to hear

and/or understand oral communications with or without assistance of amplification devices.

Participants in the program, except those qualifying by deafness, may operate vehicles on ungated or open-gated roads normally closed to vehicular traffic on Game Lands owned by the Wildlife Resources Commission. Each program participant may be accompanied by one able-bodied companion provided such companion has in his possession the companion permit issued with the Disabled Sportsman permit.

(l) Release of Animals. It is unlawful to release pen-raised animals or birds, or wild animals or birds on game lands without prior written authorization.

(m) Non-Highway Licensed Vehicles. It is unlawful to operate motorized vehicles not licensed for highway use from May 15 through August 15 on all state-owned Game Lands. Such vehicles may be operated August 16 through May 14 only on those roads constructed, maintained, and open for vehicular travel and those trails posted for vehicular use. All operators of such vehicles shall have, in their possession, a valid Game Lands Use license.

(n) Disabled Access Program. Permits issued under this program shall be based upon competent medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands where this special rule applies shall be designated in the game land rules and map book. This special access rule for disabled sportsmen does not permit vehicular access on fields, openings, roads, paths, or trails planted to wildlife food or cover. One able-bodied companion, who is identified by a special card issued to each qualified disabled person, may accompany a disabled person to provide assistance, provided the companion is at all times in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision shall prominently display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle. It shall be unlawful for anyone other than those holding a Disabled Access Permit to hunt, during waterfowl season, within 100 yards of a waterfowl blind designated by the Wildlife Resources Commission as a Disabled Sportsman's hunting blind.

Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306.

#### .0003 HUNTING ON GAME LANDS

(a) Safety Requirements. No person while hunting on

any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with special restrictions enacted by the National Park Service regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by this Chapter, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys may not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment. No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods. No live wild animals or wild birds shall be removed from any game land.

(e) Definitions:

- (1) For purposes of this Section "Eastern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(A); "Central" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(D); "Northwestern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(B); "Western" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(C).
- (2) For purposes of this Section, "Dove Only Area" refers to a Game Land on which doves may be taken and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season.
- (3) For purposes of this Section, "Three Days per Week Area" refers to a Game Land on which any

- game may be taken during the open seasons and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. These open days also apply to either-sex hunting seasons listed under each game land. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays.
- (4) For purposes of this Section, "Six Days per Week Area" refers to a Game Land on which Any game may be taken on the following game lands during the open season, except that:
- (A) Bears may not be taken on lands designated and posted as bear sanctuaries;
  - (B) Wild boar may not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons, the muzzle-loading deer season and the regular gun season on male deer on bear sanctuaries;
  - (C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, the following rules apply to the use of dogs during the regular season for hunting deer with guns:
    - (i) Except for the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, game birds may be hunted with dogs.
    - (ii) In the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, small game in season may be hunted with dogs on all game lands except on bear sanctuaries.
  - (D) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk counties dogs may not be trained or allowed to run unleashed between March 1 and the Monday on or nearest October 15;
- (f) Game Lands Seasons and Other Restrictions:
- (1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan and Stanly counties
    - (A) Six Days per Week Area
    - (B) Deer of either sex may be taken from the first Wednesday after Thanksgiving through the third Saturday after Thanksgiving except that part in Davie County where the season is the second Wednesday after Thanksgiving through the third Saturday after Thanksgiving.
  - (2) Angola Bay Game Land in Duplin and Pender counties
    - (A) Six Days per Week Area
    - (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through January 1.
  - (3) Anson Game Land in Anson County
    - (A) Six Days per Week Area
    - (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.
  - (4) Bachelor Bay Game Land in Bertie and Washington counties
    - (A) Six Days per Week Area
    - (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.
  - (5) Bertie County Game Land in Bertie County
    - (A) Six Days per Week Area
    - (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through January 1.
  - (6) Bladen County Game Land in Bladen County
    - (A) Three Days per Week Area
    - (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through January 1.
  - (7) Bladen Lakes State Forest Game Land in Bladen County
    - (A) Three Days per Week Area
    - (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week. Deer of either sex may also be taken the Saturday preceding Eastern bow season with bow and arrow and the Friday preceding the Eastern muzzle-loading season with any legal weapon (with weapons exceptions described in this Paragraph) by participants in the Disabled Sportsman Program.
  - (C) Handguns may not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire may not be used or possessed.
  - (D) On the Breeze Tract and the Singletary Tract deer and bear may be taken only by still hunting.
  - (E) Wild turkey hunting is by permit only.
- Brushy Mountains Game Land in Caldwell County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken from the third Friday after Thanksgiving through the third Saturday after Thanksgiving.
- (9) Bullard and Branch Hunting Preserve Game Lands in Robeson County
  - (A) Three Days per Week Area
  - (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through January 1.

- giving through the Saturday of the next succeeding week.
- (10) Butner - Falls of Neuse Game Land in Durham, Granville and Wake counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the first Wednesday after Thanksgiving through the following Saturday.
- (C) Waterfowl may be taken only on Tuesdays, Thursdays and Saturdays, Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons. On the posted waterfowl impoundments a special permit is required for all waterfowl hunting.
- (D) Horseback riding, including all equine species, is prohibited.
- (E) Target shooting is prohibited.
- (11) Carson Woods Game Land in Ashe County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken from the second Wednesday after Thanksgiving through the third Saturday after Thanksgiving.
- (12) Caswell Game Land in Caswell County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week. Deer of either sex may also be taken the Friday preceding the Central muzzle-loading season by participants in the Disabled Sportsman Program.
- (C) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity.
- (13) Caswell Farm Game Land in Lenoir County
- (A) Dove-Only Area
- (14) Catawba Game Land in Catawba and Iredell counties
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken from the second Wednesday after Thanksgiving through the third Saturday after Thanksgiving in that portion in Iredell County and the third Friday after Thanksgiving through the third Saturday after Thanksgiving in that portion in Catawba County.
- (C) No deer may be taken from the tract known as Island Point and deer may be taken with bow and arrow only from the tract known as Molly's Backbone.
- (15) Chatham Game Land in Chatham County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.
- (16) Cherokee Game Land in Ashe County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the second Wednesday after Thanksgiving through the third Saturday after Thanksgiving.
- (17) Cherry Farm Game Land in Wayne County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.
- (C) The use of centerfire rifles and handguns is prohibited.
- (18) Chowan Game Land in Chowan County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.
- (19) Chowan Swamp Game Land in Gates County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through January 1.
- (20) Columbus County Game Land in Columbus County.
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through January 1.
- (21) (20) Croatan Game Land in Carteret, Craven and Jones counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.
- (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
- (D) Bear season extends from the second Monday in November through the following Saturday in that portion in Jones and Craven counties and runs with the county season in Carteret.
- (22) (21) Dare Game Land in Dare County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from

- Wednesday through Saturday of the week following Thanksgiving.
- (C) No hunting on posted parts of bombing range.
- (D) The use and training of dogs is prohibited from March 1 through June 30.
- (23) (22) Dysartsville Game Land in McDowell and Rutherford counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the second Wednesday after Thanksgiving through the third Saturday after Thanksgiving in that portion in Rutherford County and from the third Friday after Thanksgiving through the third Saturday after Thanksgiving in that portion in McDowell County.
- (24) (23) Elk Knob Game Land in Ashe and Watauga counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the second Wednesday after Thanksgiving through the third Saturday after Thanksgiving in that portion in Ashe County and the third Friday after Thanksgiving through the third Saturday in that portion in Watauga County.
- (25) (24) Gardner-Webb Game Land in Cleveland County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the second Wednesday after Thanksgiving through the third Saturday after Thanksgiving.
- (26) (25) Goose Creek Game Land in Beaufort and Pamlico counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the first Wednesday of the week following after Thanksgiving through the following Saturday. Saturday of the next succeeding week.
- (C) On posted waterfowl impoundments waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons. After November 1, on the Pamlico Point, Campbell Creek, and Spring Creek impoundments, a special permit is required for hunting on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's day.
- (27) (26) Green River Game Land in Henderson, Polk and Rutherford counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the second Wednesday after Thanksgiving through the third Saturday after Thanksgiving in that portion in Rutherford County; and from the third Friday after Thanksgiving through the third Saturday after Thanksgiving in that portion in Polk and Henderson counties. County; and on the second Saturday in December in that portion in Henderson County.
- (28) (27) Green Swamp Game Land in Brunswick County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through January 1.
- (29) (28) Guilford County Farm Game Land in Guilford County
- (A) Dove-Only Area
- (30) (29) Gull Rock Game Land in Hyde County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.
- (C) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays, Wednesdays, Saturdays; Thanksgiving, Christmas, and New Year's Days; and the opening and closing days of the applicable waterfowl seasons.
- (31) (30) Hofmann Forest Game Land in Jones and Onslow counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the first Wednesday of the week following Thanksgiving through the following Saturday. Saturday of the next succeeding week.
- (32) (31) Holly Shelter Game Land in Pender County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the fourth Saturday after Thanksgiving. Deer of either sex may also be taken the Friday preceding the Eastern muzzle-loading season with any legal weapon and the Saturday preceding Eastern bow season with bow and arrow by participants in the Disabled Sportsman Program
- (C) Waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons regardless of the day of the week on which they occur.
- (33) (32) Huntsville Community Farms Game Land in Yadkin County
- (A) Three Days per Week Area

- (B) Deer of either sex may be taken from the second Wednesday after Thanksgiving through the third Saturday after Thanksgiving.
- (34) Hyco Game land in Person and Caswell counties  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through Saturday of next succeeding week
- (35) (33) Jordan Game Land in Chatham, Durham, Orange and Wake counties  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.  
 (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.  
 (D) Horseback riding, including all equine species, is prohibited.  
 (E) Target shooting is prohibited.
- (36) (34) Lantern Acres Game Land in Tyrrell and Washington counties  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken from Wednesday through Saturday of the week following Thanksgiving. Thanksgiving in that portion in Tyrrell County and Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week in that portion in Washington County.
- (37) (35) Lee Game Land in Lee County  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.
- (38) (36) Linwood Game Land in Davidson County  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.
- (39) (37) Moore Game Land in Moore County  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.
- (40) (38) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania counties  
 (A) Six Days per Week Area
- (B) Deer of either-sex may be taken the second Saturday in December in that portion located in Transylvania County.
- (C) Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to the Monday on or nearest October 15.
- (D) It is unlawful to train dogs or allow dogs to run unleashed on any game land in Graham County between March 1 and the Monday on or nearest October 15.
- (41) (39) Neuse River Game Land in Craven County  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.
- (42) (40) New Lake Game Land in Hyde County  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.
- (43) (41) North River Game Land in Currituck County  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.
- (44) (42) Northeast Cape Fear Game Land in Pender County  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through January 1.
- (45) (43) Northwest River Marsh Game Land in Currituck County  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.
- (46) (44) Pee Dee River Game Land in Anson, Montgomery, Richmond and Stanly counties  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.

- (C) Use of centerfire rifles prohibited in that portion in Anson and Richmond counties North of US-74.
- (47) (45) Person Game Land in Person County  
(A) Six Days per Week Area  
(B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.  
(C) Waterfowl may be taken only on Tuesdays, Thursdays and Saturdays, Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons.
- (48) (46) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey counties  
(A) Six Days per Week Area  
(B) Deer of either sex may be taken from the third Friday after Thanksgiving through the third Saturday after Thanksgiving in that portion in Burke, Caldwell, McDowell and Watauga counties and on the second Saturday in December in that portion in Avery (that part south of the Blue Ridge Parkway), Buncombe, Haywood, Henderson, Madison, Mitchell, Transylvania and Yancey counties.  
(C) Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to the Monday on or nearest October 15 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.
- (49) (47) Pungo River Game Land in Hyde County  
(A) Six Days per Week Area  
(B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.
- (50) (48) Roanoke River Wetlands in Bertie, Halifax and Martin counties  
(A) Hunting is by Permit only. Vehicles are prohibited on roads or trails except those operated on official Commission business or by permit holders.
- (51) (49) Robeson Game Land in Robeson County  
(A) Three Days per Week Area  
(B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.
- (52) (50) Sampson Game Land in Sampson County  
(A) Three Days per Week Area
- (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.
- (53) (51) Sandhills Game Land in Moore, Richmond and Scotland counties  
(A) Three Days per Week Area  
(B) The regular gun season for deer consists of the open hunting dates from the second Monday before Thanksgiving through the third Saturday after Thanksgiving except on the field trial grounds where the gun season is from the second Monday before Thanksgiving through the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting dates during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on Monday, Wednesday and Saturday of the second week before Thanksgiving week, and during the regular gun season.  
(C) Gun either-sex deer hunting is by permit only the Thursday and Friday before Thanksgiving Week. For participants in the Disabled Sportsman Program, either-sex deer hunting with any legal weapon is permitted on all areas the Thursday and Friday prior to the muzzle-loading season described in the preceding paragraph. Except for the deer seasons indicated in the preceding paragraph and the managed either-sex permit hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31.  
(D) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons  
(E) Wild turkey hunting is by permit only.  
(F) Dove hunting on the field trial grounds will be prohibited from the second Sunday in September through the remainder of the hunting season.
- (54) (52) Sauratown Plantation Game Land in Stokes County  
(A) Three Days per Week Area  
(B) Deer of either sex may be taken from the second Wednesday after Thanksgiving through the third Saturday after Thanksgiving.
- (55) (53) Shearon Harris Game Land in Chatham and Wake counties  
(A) Six Days per Week Area  
(B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.

- (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
- (56) (54) South Mountains Game Land in Burke and Cleveland counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the second Wednesday after Thanksgiving through the third Saturday after Thanksgiving in that portion in Cleveland County and from the third Friday after Thanksgiving through the third Saturday after Thanksgiving in that portion in Burke County.
- (57) (55) Sutton Lake Game Land in New Hanover County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from Wednesday through Saturday of the week following Thanksgiving.
- (58) (56) Three Top Mountain Game Land in Ashe County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the second Wednesday after Thanksgiving through the third Saturday after Thanksgiving.
- (59) (57) Thurmond Chatham Game Land in Wilkes County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the second Wednesday after Thanksgiving through the third Saturday after Thanksgiving. Participants of the Disabled Sportsman Program may also take either-sex deer with bow and arrow on the Saturday prior to Northwestern bow and arrow season.
- (C) Horseback riding is only allowed during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to horseback riding on this area.
- (60) (58) Toxaway Game Land in Transylvania County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken on the second Saturday in December. Participants of the Disabled Sportsman Program Deer may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western bow and arrow season.
- (61) (59) Uwharrie Game Land in Davidson, Montgomery and Randolph counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the first Wednesday after Thanksgiving through the Saturday of the next succeeding week.
- (62) (60) Vance Game Land in Vance County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through January 1.
- (C) The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.
- (63) Wayne County Game Land in Wayne County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the Wednesday of the week following Thanksgiving through the Saturday of the next succeeding week.
- (64) (61) White Oak River Impoundment Game Land in Onslow County
- (A) Three Days per Week Area
- (B) Deer of either-sex may be taken from the first Wednesday after Thanksgiving through January 1.
- (C) Waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons regardless of the day of the week on which they occur.
- (65) (62) Yadkin Game Land in Caldwell County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken from the third Friday after Thanksgiving through the third Saturday after Thanksgiving.
- (g) On permitted type hunts deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits are issued by random computer selection, are mailed to the permittees prior to the hunt, and are nontransferable. A hunter making a kill must tag the deer and report the kill to a wildlife cooperator agent.
- (h) The following game lands and refuges are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:
- Bertie, Halifax and Martin counties--Roanoke River Wetlands;
- Bertie County--Roanoke River National Wildlife Refuge.
- Burke County--John's River Waterfowl Refuge
- Dare County--Dare Game Lands (Those parts of bombing range posted against hunting)
- Davie--Hunting Creek Swamp Waterfowl Refuge
- Gaston, Lincoln and Mecklenburg counties--Cowan's Ford Waterfowl Refuge.

Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5;

113-305.

\* \* \* \* \*

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rules cited as 15A NCAC 10C .0205, .0305.

**Proposed Effective Date:** July 1, 1997

**Public Hearings will be conducted at the following times, locations and dates:**

**15A NCAC 10C .0205**

August 5, 1996

7:00 p.m.

Buncombe County Courthouse  
District Court Room  
Asheville, NC

**15A NCAC 10C .0305**

August 9, 1996

1:00 p.m.

Archdale Building  
3rd Floor Conference Room  
Raleigh, NC

**Reason for Proposed Action:**

**15A NCAC 10C .0205** - to regulate/restrict the harvest of trout in public mountain trout waters.

**15A NCAC 10C .0305** - to regulate/restrict take of inland game fish.

**Comment Procedures:** Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from July 15, 1996 through August 14, 1996. Such written comments must be delivered or mailed to the North Carolina Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of state or local government funds. These Rules do not have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.

**SUBCHAPTER 10C - INLAND FISHING REGULATIONS**

**SECTION .0200 - GENERAL REGULATIONS**

**.0205 PUBLIC MOUNTAIN TROUT WATERS**

(a) Designation of Public Mountain Trout Waters. The waters listed herein or in 15A NCAC 10D .0004 are designated as Public Mountain Trout Waters and further classified as Wild Trout Waters or Hatchery Supported Waters. For specific classifications, see Subparagraphs (1)

and (2) of this Paragraph. These waters are posted and lists thereof are filed with the clerks of superior court of the counties in which they are located:

(1) **Hatchery Supported Trout Waters.** The listed waters in the counties in Subparagraphs (1)(A)-(Y) are classified as Hatchery Supported Public Mountain Trout Waters. Where specific watercourses or impoundments are listed, indentation indicates that the watercourse or impoundment listed is tributary to the next preceding watercourse or impoundment listed and not so indented. This classification applies to the entire watercourse or impoundment listed except as otherwise indicated in parentheses following the listing. Other clarifying information may also be included parenthetically. The tributaries of listed watercourses or impoundments are not included in the classification unless specifically set out therein. Otherwise, Wild Trout regulations apply to the tributaries.

(A) **Alleghany County:**

New River (not trout water)

Little River (Whitehead to McCann Dam)

Crab Creek

Brush Creek (except where posted against trespass)

Big Pine Creek

Laurel Branch

Big Glade Creek

Bledsoe Creek

Pine Swamp Creek

Waterfalls Creek (South Fork Little River)(except where posted against trespass)

South Fork New River (not trout water)

Prather Creek

Cranberry Creek

Piney Fork

Meadow Fork

Yadkin River (not trout water)

Roaring River (not trout water)

East Prong Roaring River (that portion on Stone Mountain State Park) Delayed Harvest Waters regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.

(B) **Ashe County:**

New River (not trout waters)

North Fork New River (Watauga Co. line to Sharp Dam)

Helton Creek (Virginia State line to New River)

Big Horse Creek (SR 1361 bridge to Tuckerdale)

Buffalo Creek (headwaters to junction of NC 194-88 and SR 1131)

Big Laurel Creek

Three Top Creek (portion not on game

- lands)  
 Hoskins Fork (Watauga County line to North Fork New River)  
 South Fork New River (not trout waters)  
   Cranberry Creek (Alleghany County line to South Fork New River)  
   Nathans Creek  
   Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)  
   Trout Lake (Delayed harvest regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.)  
   Roan Creek  
   North Beaver Creek  
   South Beaver Creek (headwaters to Ashe Lake)  
   Pine Swamp Creek (all forks)  
   Old Fields Creek  
   Mill Creek (except where posted against trespass)
- (C) Avery County:  
 Nolichucky River (not trout waters)  
   North Toe River (headwaters to Mitchell County line, except where posted against trespass)  
   Squirrel Creek  
   Elk River (SR 1306 crossing to Tennessee State line, including portions of tributaries on game lands)  
   Catawba River (not trout water)  
   Johns River (not trout water)  
   Wilson Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]  
   Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (4) of Paragraph (a) of this Rule]  
   Gragg Prong (including tributaries)  
   Webb Prong (including tributaries)  
   Buck Timber Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]  
   Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]  
   Boyd Coffey Lake  
   Archie Coffey Lake  
 Linville River [Land Harbor line (below dam) to Blue Ridge Parkway boundary line, except where posted against trespass]  
 Milltimber Creek
- (D) Buncombe County:  
 French Broad River (not trout water)  
 Big Ivy Creek (Ivy River) (Dillingham Creek to US 19-23 bridge)  
 Dillingham Creek (Corner Rock Creek to Big Ivy Creek)
- Stony Creek  
 Mineral Creek (including portions of tributaries on game lands)  
 Corner Rock Creek (including tributaries, except Walker Branch)  
 Reems Creek (Sugar Camp Fork to US 19-23 bridge, except where posted against trespass)  
 Swannanoa River (SR 2702 bridge near Ridgecrest to Sayles Bleachery in Asheville, except where posted against trespass)  
 Bent Creek (headwaters to N.C. Arboretum boundary line, including portions of tributaries on game lands)  
 Lake Powhatan  
 Cane Creek (headwaters to SR 3138 bridge)
- (E) Burke County:  
 Catawba River (not trout water)  
 South Fork Catawba River (not trout water)  
   Henry Fork (lower Morganton watershed line downstream to SR 1919 at Ivy Creek)  
   Jacob Fork (Shinny Creek to lower South Mountain State Park boundary) Delayed Harvest  
   Regulations apply. See Subparagraph (a)(5) of this Rule.  
 Johns River (not trout water)  
 Parks Creek (portion not on game lands not trout water)  
 Carroll Creek (game lands portion above SR 1405 including tributaries)  
 Linville River (game lands portion below the Blue Ridge Parkway including portions of tributaries on game lands and from first bridge on SR 1223 below Lake James powerhouse to Muddy Creek)
- (F) Caldwell County:  
 Catawba River (not trout water)  
 Johns River (not trout water)  
   Wilson Creek (Phillips Branch to Browns Mountain Beach dam, except where posted against trespass)  
   Estes Mill Creek (not trout water)  
   Thorpe Thorps Creek (falls to NC 90 bridge)  
 Mulberry Creek (portion not on game lands not trout water)  
 Boone Fork (not Hatchery Supported trout water. See Subparagraph (2) of Paragraph (a) of this Rule)  
 Boone Fork Pond
- (G) Cherokee County:  
 Hiwassee River (not trout water)  
 Shuler Creek (headwaters to Tennessee line, except where posted against trespass)

- including portions of tributaries on game lands)
- North Shoal Creek (Crane Creek) (headwaters to SR 1325, including portions of tributaries on game lands)
- Persimmon Creek
- Davis Creek (including portions of tributaries on game lands)
- Bald Creek (including portions of tributaries on game lands)
- Beaver Dam Creek (headwaters to SR 1326 bridge, including portions of tributaries on game lands)
- Valley River
- Hyatt Creek (including portions of tributaries on game lands)
- Webb Creek (including portions of tributaries on game lands)
- Junaluska Creek (Ashturn Creek to Valley River, including portions of tributaries on game lands)
- (H) Clay County:
- Hiwassee River (not trout water)
- Fires Creek (first bridge above the lower game land line on US Forest Service road 442 to SR 1300)
- Tusquitee Creek (headwaters to lower SR 1300 bridge, including portions of Bluff Branch on game lands)
- Tuni Creek (including portions of tributaries on game lands)
- Chatuge Lake (not trout water)
- Shooting Creek (headwaters SR 1349 bridge to US 64 bridge at SR 1338)
- Hothouse Branch (including portions of tributaries on gamelands)
- Vineyard Creek (including portions of tributaries on game lands)
- (I) Graham County:
- Little Tennessee River (not trout water)
- Calderwood Reservoir (Cheoah Dam to Tennessee State line)
- Cheoah River (not trout water)
- Yellow Creek
- Santeelah Reservoir (not trout water)
- West Buffalo Creek
- Huffman Creek (Little Buffalo Creek)
- Santeelah Creek (Johns Branch to mouth including portions of tributaries within this section located on game lands, excluding Johns Branch)
- Big Snowbird Creek (old railroad junction to mouth, including portions of tributaries on game lands)
- Mountain Creek (game lands boundary to SR 1138 bridge)
- Long Creek (portion not on game lands)
- Tulula Creek (headwaters to lower bridge on SR 421 to 1275)
- Franks Creek
- Cheoah Reservoir
- Fontana Reservoir (not trout water)
- Stecoah Creek
- Sawyer Creek
- Panther Creek (including portions of tributaries on game lands)
- (J) Haywood County:
- Pigeon River (not trout water)
- Hurricane Creek (including portions of tributaries on game lands)
- Cold Springs Creek (including portions of tributaries on game lands)
- Jonathans Creek - lower (concrete bridge in Dellwood to Pigeon River)
- Jonathans Creek - upper [SR 1302 bridge (west) to SR 1307 bridge]
- Hemphill Creek
- West Fork Pigeon River (headwaters to Champion International property line, including portions of tributaries within this section located on game lands, except Middle Prong)
- Richland Creek (Russ Avenue bridge to US 19A-23 bridge) Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.
- (K) Henderson County:
- ~~Broad River (not trout water)~~
- ~~Rocky (Rocky) Broad River (one-half mile north of Bat Cave to Rutherford County line)~~
- ~~Green River - upper (mouth of Bob Bobs Creek to mouth of Rock Creek)~~
- ~~Green River - lower (Lake Summit Dam to Polk County line)~~
- ~~Camp Creek (SR 1919 to Polk County line)~~
- ~~Big (Big) Hungry River~~
- ~~Little Hungry River~~
- French Broad River (not trout water)
- Mills River (not trout water)
- North Fork Mills River (game lands portion below the Hendersonville watershed dam). Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.
- (L) Jackson County:
- Tuckasegee River (confluence with West Fork Tuckasegee River to SR 1392 bridge at Wilmot) Delayed Harvest Regulations apply to that portion between NC 107 bridge at Love Field and NC 116 bridge at

Webster. See Subparagraph (a)(5) of this Rule.

Scott Creek (entire stream, except where posted against trespass)

    Dark Ridge Creek (Jones Creek to Scotts Creek)

    Buff Creek (SR 1457 bridge below Bill Johnson's place to Scott Creek)

Savannah Creek (Headwaters to Bradley's Packing House on NC 116)

    Greens Creek (Greens Creek Baptist Church on SR 1730 to Savannah Creek)

Cullowhee Creek (Tilley Creek to Tuckasegee River)

Bear Creek Lake

Wolf Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

    Wolf Creek Lake

    Balsam Lake

Tanasee Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

    Tanasee Creek Lake

West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glenville Lake)

    Shoal Creek (Glenville Reservoir pipeline to mouth)

(M) Macon County:

Little Tennessee River (not trout water)

Nantahala River (Nantahala Dam to Swain County line) Delayed Harvest Regulations apply to the portion from Whiteoak Creek to the Nantahala Power and Light powerhouse discharge canal. See Subparagraph (a)(5) of this Rule.

Queens Creek Lake

Burnington Creek (including portions of tributaries on game lands)

Cullasaja River (Sequoah Dam to US 64 bridge near junction of SR 1672, including portions of tributaries on game lands, excluding those portions of Big Buck Creek and Turtle Pond Creek on game lands. Wild trout regulations apply. See Subparagraphs (2) and (6) of Paragraph (a) of this Rule.)

    Ellijay Creek (except where posted against trespass, including portions of tributaries on game lands)

    Skitty Creek

        Cliffside Lake

    Cartoogechaye Creek (US 64 bridge to Little Tennessee River)

    Tessentee Creek (Nichols Branch to Little Tennessee River, except where

posted against trespassing)

Savannah River (not trout water)

    Big Creek (base of falls to Georgia State line, including portions of tributaries within this Section located on game lands)

(N) Madison County:

French Broad River (not trout water)

    Shut-In Creek (including portions of tributaries on game lands)

    Spring Creek (junction of NC 209 and NC 63 to lower US Forest Service boundary line, including portions of tributaries on game lands)

    Meadow Fork Creek

    Roaring Fork (including portions of tributaries on game lands)

    Little Creek

    Max Patch Pond

    Mill Ridge Pond

    Big Laurel Creek (Mars Hill Watershed boundary to Rice's Mill Dam)

    Shelton Laurel Creek (headwaters to NC 208 bridge)

    Big Creek (headwaters to lower game land boundary, including tributaries)

    Mill Creek

    Big Pine Creek

    Puncheon Fork (Hampton Creek to Big Laurel Creek)

(O) McDowell County:

Catawba River (portion not on game lands, not trout water)

    Buck Creek (portion not on game lands, not trout water)

    Little Buck Creek (game land portion including portions of tributaries on game lands)

    Curtis Creek (Newberry Creek to US 70 bridge)

    North Fork Catawba River (headwaters to North Cove School, SR 1569)

    Armstrong Creek (Cato Holler line downstream to upper Greenlee line)

    Mill Creek (upper railroad bridge to U.S. 70 Bridge, except where posted against trespass)

(P) Mitchell County:

Nolichucky River (not trout water)

    Big Rock Creek (headwaters to NC 226 bridge at SR 1307 intersection)

    Little Rock Creek (Green Creek Bridge to Big Rock Creek, except where posted against trespass)

    Cane Creek (SR 1219 to Nolichucky River)

    Grassy Creek (East Fork Grassy Creek to

- mouth)  
East Fork Grassy Creek  
North Toe River (Avery County line to SR 1121, Altapass Road)
- (Q) Polk County:  
Broad River (not trout water)  
North Pacolet River (Pacolet Falls to NC 108 bridge)  
Fork Creek (Fork Creek Church on SR 4428 1100 to North Pacolet River)  
Big Fall Creek (portion above and below water supply reservoir)  
Green River (Henderson County line to mouth of Brights Creek)  
Little Cove Creek (including portions of tributaries on game lands)  
Cove Creek (including portions of tributaries on game lands)  
Camp Creek [Henderson County line (top of falls) to Green River]  
Fulloms Creek (SR 1154 to Green River, including portions of tributaries on game lands)
- (R) Rutherford County:  
~~Broad River (not trout water)~~  
Reekey (Rocky) Broad River (Henderson County line to head of rapids at Goose Pond Hole, except where posted against trespass)
- (S) Stokes County:  
Dan River (SR 1416 bridge downstream to a point 200 yards below the end of SR 1421)
- (T) Surry County:  
Yadkin River (not trout water)  
Ararat River (SR 1727 downstream to the Business US 52 bridge) Delayed Harvest regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.  
Stewarts Creek (not trout water)  
Pauls Creek (Virginia State line to 0.3 mile below SR 1625 bridge - lower Caudle property line)  
Fisher River (Cooper Creek) (Virginia State line to NC 89 bridge)  
Little Fisher River (Virginia State line to NC 89 bridge)
- (U) Swain County:  
Little Tennessee River (not trout water)  
Calderwood Reservoir (Cheoah Dam to Tennessee State line)  
Cheoah Reservoir  
Fontana Reservoir (not trout water)  
Alarka Creek  
Nantahala River (Macon County line to existing Fontana Reservoir water level)  
Tuckasegee River (not trout water)  
Deep Creek (Great Smoky Mountains
- National Park boundary line to Tuckasegee River)  
Connelly Creek (including portions of tributaries on game lands)
- (V) Transylvania County:  
French Broad River (junction of west and north forks to US 276 bridge)  
Davidson River (Avery Creek to Ecusta intake)  
East Fork French Broad River (Glady Branch Fork to French Broad River)  
Middle Fork French Broad River  
West Fork French Broad River (SR 1312 and SR 1309 intersection to junction of west and north forks, including portions of tributaries within this section located on game lands)  
Savannah River (not trout water)  
Thompson River (SR 1152 to South Carolina state line, except where posted against trespass, including portions of tributaries within this section located on game lands)
- (W) Watauga County:  
New River (not trout waters)  
North Fork New River (from confluence with Maine and Mine branches to Ashe County line)  
Maine Branch (headwaters to North Fork New River)  
South Fork New River (not trout water)  
Meat Camp Creek  
Norris Fork Creek  
Howards Creek (downstream from lower falls)  
Middle Fork New River (Lake Chetola Dam to South Fork New River)  
Yadkin River (not trout water)  
Stony Fork (headwaters to Wilkes County line)  
Elk Creek (headwaters to gravel pit on SR 1508, except where posted against trespass)  
Watauga River (SR 1559 at Foscoe downstream to NC 105 bridge) Delayed Harvest Regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.  
Beech Creek  
Buckeye Creek Reservoir  
Coffee Lake  
Laurel Creek  
Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)  
Dutch Creek (second bridge on SR 1134 to mouth)  
Boone Fork (headwaters to SR 1562)
- (X) Wilkes County:  
Yadkin River (not trout water)

- Roaring River (not trout water)  
East Prong Roaring River (Bullhead Creek to Brewer's Mill on SR 1943)  
(Delayed harvest regulations apply to portion on Stone Mountain State Park)  
See Subparagraph (5) of Paragraph (a) of this Rule.
- Stone Mountain Creek (Delayed Harvest Regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.)
- Middle Prong Roaring River (headwaters to second bridge on SR 1736)  
Double Creek (Harris Creek to Middle Prong Roaring River)  
Harris Creek (end of SR 1716 1736 to mouth) Double Creek  
Pett Bell Branch Pond  
Boundary Line Pond
- West Prong Roaring River (not trout waters)  
Pike Creek  
Pike Creek Pond
- Reddies River (not trout water)  
Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580)  
South Fork Reddies River (headwaters to NC 16 bridge) confluence with Middle Fork Reddies River  
North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on SR 1559)  
Darnell Creek North Prong Reddies River (Darnell Creek)  
(North Prong Reddies River)  
(downstream ford on SR 1569 to confluence with North Fork Reddies River)
- Lewis Fork Creek (not trout water)  
South Prong Lewis Fork (headwaters to Lewis Fork Baptist Church)  
Fall Creek (except portions posted against trespass)
- (Y) Yancey County:  
Nolichucky River (not trout water)  
Cane River [Bee Branch (SR 1110) to Bowlens Creek]  
Bald Mountain Creek (except portions posted against trespass)  
Indian Creek (not trout water)  
Price Creek (junction of SR 1120 and SR 1121 to Indian Creek)
- North Toe River (not trout water)  
South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass)
- (2) Wild Trout Waters. All waters designated as Public Mountain Trout Waters on the game lands listed in Subparagraph (b)(2) of 15A NCAC 10D .0004, are classified as Wild Trout Waters unless specifically classified otherwise in (A)(1) of this Rule. The trout waters listed in this Subparagraph are also classified as Wild Trout Waters.
- (A) Alleghany County:  
Big Sandy Creek (portion on Stone Mountain State Park)  
Ramey Creek (entire stream)  
Stone Mountain Creek (that portion on Stone Mountain State Park)
- (B) Ashe County:  
Big Horse Creek (Virginia State Line to SR 1361 bridge) Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.
- (C) Avery County:  
Birchfield Creek (entire stream)  
Cow Camp Creek (entire stream)  
Cranberry Creek (entire stream)  
Horse Creek (entire stream)  
Jones Creek (entire stream)  
Kentucky Creek (entire stream)  
North Harper Creek (entire stream)  
Plumtree Creek (entire stream)  
Roaring Creek (entire stream)  
Rockhouse Creek (entire stream)  
South Harper Creek (entire stream)  
Wilson Creek (Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.)
- (D) Buncombe County:  
Carter Creek (game land portion) (Catch and Release/Artificial Lures only regulations apply. See Subparagraph (3) of Paragraph (a) of this Rule.)
- (E) Burke County:  
All waters located on South Mountain State Park, except the main stream of Jacob Fork between the mouth of Shinn Creek and the lower park boundary where delayed harvest regulations apply. apply, and Henry Fork and tributaries where catch and release/artificial lures only regulations apply. See Subparagraph Subparagraphs (3) and (5) of Paragraph (a) of this Rule.
- (F) Caldwell County:  
Buffalo Creek (headwaters to lower Dahl property line)  
Joe Fork (Watauga County line to falls)  
Rockhouse Creek (entire stream)
- (G) Graham County:  
South Fork Squalla Squally Creek (entire stream)  
Squalla Squally Creek (entire stream)

- (H) Jackson County:  
Gage Creek (entire stream)  
North Fork Scott Creek (entire stream)  
Tanasee Creek (entire stream)  
Whitewater River (downstream from Silver Run Creek to South Carolina State line)  
Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)
- (I) Madison County  
Spillcorn Creek (entire stream)
- (J) Mitchell County:  
Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)  
Little Rock Creek (headwaters to Green Creek Bridge, including all tributaries, except where posted against trespass)  
Wiles Creek (game land boundary to mouth)
- (K) Transylvania County:  
Whitewater River (downstream from Silver Run Creek to South Carolina State line)
- (L) Watauga County:  
Boone Fork (Blue Ridge Parkway boundary line to Watauga River) [Catch and Release Fly Fishing Only regulations apply. See Subparagraph (4) of Paragraph (a) of this Rule.]  
Dutch Creek (headwaters to second bridge on SR 1134)  
Howards Creek (headwaters to lower falls)  
Watauga River (Avery County line to SR 1559)
- (M) Wilkes County:  
Big Sandy Creek (portion on Stone Mountain State Park)  
Garden Creek (portion on Stone Mountain State Park)  
Harris Creek and tributaries [portions on Stone Mountain State Park] [Catch and Release Artificial Lures Only regulations apply. See Subparagraph (4) of Paragraph (a) of this Rule.]  
Widow Creek (portion on Stone Mountain State Park)
- (N) Yancey County:  
Lickskillet Creek (entire stream)  
Middle Creek (game land boundary to mouth)  
Rock Creek (game land boundary to mouth)  
South Toe River (game land boundary downstream to Clear Creek)
- (3) Catch and Release/Artificial Lures Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:
- (A) Ashe County:
- Big Horse Creek (Virginia State line to SR 1361 bridge excluding tributaries)  
Three Top Creek (portion located on Three Top Mountain Game Lands)
- (B) Avery County:  
Wilson Creek (game land portion)
- (C) Buncombe County:  
Carter Creek (game land portion)
- (D) Burke County:  
Henry Fork (portion on South Mountains State Park)
- (E) ~~(D)~~ Jackson County:  
Flat Creek  
Tuckasegee River (upstream of Clarke property)
- (F) ~~(E)~~ McDowell County:  
Newberry Creek (game land portion)
- (G) ~~(F)~~ Wilkes County:  
Harris Creek (portion on Stone Mountain State Park)
- (H) ~~(G)~~ Yancey County:  
Lower Creek  
Upper Creek
- (4) Catch and Release/Artificial Flies Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Fly Fishing Only waters. Only artificial flies having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:
- (A) Avery County:  
Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)
- (B) Transylvania County:  
Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)
- (C) Watauga County:  
Boone Fork (portion between Blue Ridge Parkway boundary and the Watauga River)
- (D) Yancey County:  
South Toe River (portion from the concrete bridge above Black Mountain Campgroup downstream to game land boundary, excluding Camp Creek and Neals Big Lost Cove Creek)
- (5) Delayed Harvest Trout Waters. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 October and one-half hour after sunset on the Friday before the first Saturday of the following June, inclusive, it is unlawful to possess natural bait and only artificial lures with one single hook may be used. No fish may be harvested or be in possession while fishing these streams during this time. These

waters are closed to fishing between one-half hour after sunset on the Friday before the first Saturday in June and 6:00 a.m. on the first Saturday in June. At 6:00 a.m. on the first Saturday in June these streams open for fishing under Hatchery Supported Waters regulations:

- (A) Ashe County:  
Trout Lake
  - (B) Burke County:  
Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)
  - (C) Haywood County:  
Richland Creek (Russ Avenue bridge to US 19A-23 bridge)
  - (D) Henderson County:  
North Fork Mills River (game land portion below the Hendersonville watershed dam)
  - (E) Jackson County:  
Tuckasegee River (NC 107 bridge at Love Field Downstream to NC 116 bridge at Webster)
  - (F) Macon County:  
Nantahala River (portion from Whiteoak Creek to the Nantahala Power and Light power house discharge canal)
  - (G) Surry County:  
Ararat River (SR 1727 downstream to Business US 52 bridge)
  - (H) Watauga County:  
Watauga River (SR 1559 bridge at Foscoe downstream to NC 105 bridge)
  - (I) Wilkes County:  
East Prong Roaring River (from Bullhead Creek downstream to the Stone Mountain State Park lower boundary)  
Stone Mountain Creek (from falls at Allegheny County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park)
  - (6) Wild Trout/Natural Bait Waters. Those portions of designated Wild Trout Waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Wild Trout/Natural Bait Waters. All artificial lures and natural baits, except live fish, are allowed provided they are fished using only one single hook. The creel limit, size limit, and open season are the same as other Wild Trout Waters [see 15A NCAC 10C .0305(a)].
    - (A) Cherokee County:  
Tellico River (Fain Ford to Tennessee state line excluding tributaries)
    - (B) Clay County:  
Buck Creek (game land portion downstream of US 64 bridge)
    - (C) Graham County:  
Deep Creek
- Long Creek (game land portion)
  - (D) Jackson County:
    - Chattooga River (SR 1100 bridge to South Carolina state line)
    - (lower) Fowler Creek (game land portion)
    - Scotsman Creek (game land portion)
  - (E) Macon County:
    - Chattooga River (SR 1100 bridge to South Carolina state line)
    - Jarrett Creek (game land portion)
    - Kimsey Creek
    - Overflow Creek (game land portion)
    - Park Creek
    - Tellico Creek (game land portion)
    - Turtle Pond Creek (game land portion)
  - (F) Transylvania County:
    - North Fork French Broad River (game land portions downstream of SR 1326)
- (b) Fishing in Trout Waters
- (1) Hatchery Supported Trout Waters. It is unlawful to take fish of any kind by any manner whatsoever from designated public mountain trout waters during the closed seasons for trout fishing. The seasons, size limits, creel limits and possession limits apply in all waters, whether designated or not, as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so designated, it is unlawful to fish in designated public mountain trout waters with more than one line. Night fishing is not allowed in most hatchery supported trout waters on game lands [see 15A NCAC 10D .0004(b)(1)].
  - (2) Wild Trout Waters. Except as otherwise provided in Subparagraphs (3), (4), and (6) of Paragraph (a) of this Rule, the following rules apply to fishing in wild trout waters.
    - (A) Open Season. There is a year round open season for the licensed taking of trout.
    - (B) Creel Limit. The daily creel limit is four trout.
    - (C) Size Limit. The minimum size limit is seven inches.
    - (D) Manner of Taking. Only artificial lures having only one single hook may be used. No person shall possess natural bait while fishing wild trout waters except those waters listed in 15A NCAC 10C .0205(a)(6).
    - (E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

Statutory Authority G.S. 113-134; 113-272; 113-292.

**SECTION .0300 - GAME FISH**

**.0305 OPEN SEASONS: CREEL AND SIZE LIMITS**

(a) Generally. Subject to the exceptions listed in Paragraph (b) of this Rule, the open seasons and creel and size limits are as indicated in the following table:

<b>GAME FISHES</b>	<b>DAILY CREEL LIMITS</b>	<b>MINIMUM SIZE LIMITS</b>	<b>OPEN SEASON</b>
Mountain Trout:			
Wild Trout Waters	4	7 in.	ALL YEAR (exc. 2)
Hatchery Supported Trout Waters and undesignated waters	7	None	All year, except March 1 to 6:00 a.m. on first Saturday in April (exc. 2)
Muskellunge and Tiger Musky	2	30 in.	ALL YEAR
Chain Pickerel (Jack)	None	None	ALL YEAR
Walleye	8 (excs. 8 & 9)	None	ALL YEAR (exc. 8)
Sauger	8	15 in.	ALL YEAR
Black Bass:			
Largemouth	5 (exc. 9)	14 in. (excs. 3, 7 & 10)	ALL YEAR (exc. 18)
Smallmouth and Spotted	5 (exc. 9)	12 in. (excs. 3, 7 & 10)	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	10	12 in.	ALL YEAR
Flounder	None	13 in.	ALL YEAR
Red drum (channel bass, red fish, puppy drum)	5	18 in.	ALL YEAR
Striped Bass and their hybrids (Morone Hybrids)	8 aggregate (excs. 1 & 5)	16 in. (excs. 1, 5 & 11)	ALL YEAR (excs. 5, 13, & 15)
Shad: (American and hickory)	None	None	ALL YEAR (exc. 19)
Kokanee Salmon	7	None	ALL YEAR

Panfishes	None (excs. 4, 12, & 16)	None (exc. 12)	ALL YEAR (exc. 4)
NONGAME FISHES	None (exc. 14)	None (exc. 14)	ALL YEAR (excs. 6 & 17)

## (b) Exceptions

- (1) In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam, and in John H. Kerr, Gaston, and Roanoke Rapids Reservoirs, and Lake Norman, the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches.
- (2) In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Nantahala River and all tributaries (excluding impoundments) upstream from Nantahala Lake, and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing.
- (3) Bass taken from Calderwood Reservoir may be retained without restriction as to size limit.
- (4) On Mattamuskeet Lake, special federal regulations apply.
- (5) In the inland fishing waters of Cape Fear, Neuse, Pee-Dee, Pungo and Tar-Pamlico rivers and their tributaries and the Roanoke River and its tributaries, including the Cashie, Middle, and Eastmost rivers, extending upstream to the first impoundment, the daily creel limit for striped bass and their hybrids is three fish and the minimum length limit is 18 inches. In the Roanoke River and its tributaries, including the Cashie, Middle, and Eastmost rivers-from April 1 to May 31 no fish between the lengths of 22 inches and 27 inches may be retained.
- (6) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.
- (7) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in Lake Luke Marion in Moore County, in Reedy Creek Park lakes in Mecklenburg County, in Lake Rim in Cumberland County, in Currituck Sound and tributaries north of Wright Memorial Bridge, in North River and tributaries in Currituck and Camden Counties north of a line between Camden Point and the end of SR 1124, in High Rock Lake downstream of I-85, in Badin Lake, in Falls Lake, in Lake Tillery, in Blewett Falls Lake, and in the New River and its tributaries in Onslow County. In and west of Madison, Buncombe, Henderson and Polk Counties and in designated public mountain trout waters the minimum size limit is 12 inches. In B. Everett Jordan Reservoir a minimum size limit of 16 inches, with no exception, applies to largemouth bass. In Falls of Neuse Reservoir, east of SR 1004, and Tuckertown Lake no black bass between the lengths of 12 inches and 16 inches may be retained, and the minimum size limit for black bass is 16 inches, except that the daily creel may contain two black bass of less than 12 inches in length. In W. Kerr Scott Reservoir there is no minimum size limit for spotted bass.
- (8) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
- (9) The creel limit for black bass and walleye taken from Calderwood Reservoir is 10.
- (10) The minimum size limit for all black bass, with no exception, is 18 inches in the following trophy bass lakes:
  - (A) Cane Creek Lake in Union County;
  - (B) Lake Thom-A-Lex in Davidson County; and
  - (C) Sutton Lake in New Hanover County.
- (11) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1), the daily creel limit of striped bass and their hybrids may include not more than two fish of smaller size than the minimum size limit.
- (12) In Lake Tillery, Falls Lake, High Rock Lake, Badin Lake, Tuckertown Lake, Lake Hyco, Lake Ramseur and Cane Creek Lake a daily creel limit of 20 fish and a minimum size limit of 8 inches apply to crappie.
- (13) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits shall be the same as those established by duly adopted rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.
- (14) The daily creel and length limits for channel, white, and blue catfish in designated urban lakes are provided for in 15A NCAC 10C .0401(d).
- (15) The Executive Director may, by proclamation,

- suspend or extend the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.
- (16) In the entire Lumber River from the Camp MacKall bridge (SR 1225, at the point where Richmond, Moore, Scotland, and Hoke counties join) to the South Carolina state line and in all public fishing waters east of I-95, except Tar River Reservoir in Nash County, the daily creel limit for sunfish is 30 in aggregate, no more than 12 of which may be redbreast sunfish.
- (17) It is unlawful to possess bowfin taken from the Lumber River and its tributaries.
- (18) In Sutton Lake, no largemouth bass may be retained from December 1 through March 31.
- (19) In the Pee Dee River downstream from the Blewett Falls dam, shad may be taken with special fishing devices as provided for in 15A NCAC 10C .0404 (b) during the permitted special fishing device seasons specified in 15A NCAC 10C .0407.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

## TITLE 21 - OCCUPATIONAL LICENSING BOARDS

### CHAPTER 69 - BOARD FOR LICENSING OF SOIL SCIENTISTS

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board for Licensing of Soil Scientists intends to adopt rules cited as 21 NCAC 69 .0101 - .0104, .0201 - .0202, .0301 - .0308, .0401 - .0402 and .0501.

Proposed Effective Date: April 1, 1997

A Public Hearing will be conducted at 10:00 a.m. on August 15, 1996 at Room 175, 4405 Bland Road, Raleigh, NC 27609.

**Reason for Proposed Action:** Passage of G.S. 89F in July, 1995 established licensing of soil scientists. The licensing board created by this statute requires rules for its function especially with respect to allowing licensing without examination prior to November, 1996. Notice of rule-making proceedings was published in the Register on January 2, 1996.

**Comment Procedures:** All persons interested in this matter are encouraged to submit written comments or questions to H.J. Kleiss, N.C. Board for Licensing of Soil Scientists, P.O. Box 5316, Raleigh, NC 27650-5316. Comments will

be accepted through the public hearing on August 15, 1996.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of state or local government funds. These Rules do not have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.

## SECTION .0100 - STATUTORY AND ADMINISTRATIVE PROVISIONS

### .0101 AUTHORITY: NAME AND LOCATION OF BOARD

The "North Carolina Soil Scientist Licensing Act", G.S. 89F, establishes and authorizes the "North Carolina Board for Licensing of Soil Scientists", hereafter called the "Board". Unless otherwise directed all communications shall be addressed to the North Carolina Board for Licensing of Soil Scientists at PO Box 5316, Raleigh, North Carolina 27650-5316.

Authority G.S. 89F-4; 89F-5.

### .0102 DUTIES OF OFFICERS

(a) **Chairman.** The Chairman shall, when present, preside at all meetings, appoint committees, sign all certificates issued and perform all duties pertaining to his office.

(b) **Vice-Chairman.** The Vice-Chairman, in the absence of the Chairman, shall perform all of the duties of the Chairman.

(c) **Secretary-Treasurer:**

(1) The Secretary-Treasurer, with the assistance of other officers or employees that may be approved by the Board, shall conduct and care for all correspondence of the Board, keep minutes of all meetings, and keep all books and records. He shall have charge, care and custody of the official documents by order of the Board. He shall provide notice to each member of the Board of the time and place of all meetings of the Board.

(2) The Secretary-Treasurer, with the assistance of other officers or employees that may be approved by the Board, shall receive all monies from applicants for annual renewal or other fees and deposit them in an authorized depository of the Board.

(3) The Secretary-Treasurer shall mail a copy of G.S. 89F and the rules of this Chapter to each applicant for a license.

Authority G.S. 89F-5.

### .0103 SEAL OF THE BOARD

The official seal of the Board is the Seal of the State of North Carolina.

Authority G.S. 89F-5.

**.0104 FEES**

Each completed application form shall be accompanied by the prescribed fee. Application fees shall not be refunded regardless of Board approval or disapproval of the application.

(1) application forms for licensing as a Soil Scientist, including a copy of the Licensing Act and rules	\$ 5.00
(2) application for license	50.00
(3) examination	125.00
(4) license	85.00
(5) renewal of license	50.00
(6) restoration of license	110.00
(7) replacement of license	50.00
(8) licensed soil scientist seal	30.00

Authority G.S. 55B-10; 55B-11; 89F-25; 150B-19.

**SECTION .0200 - LICENSING OF SOIL SCIENTISTS****.0201 APPLICATION PROCEDURE**

(a) All applicants for licensing shall furnish the following:

- (1) A legible official copy of their college transcript(s), and verification of graduation sent directly from the institution to the Board;
- (2) A record of experience in the practice of soil science including any of the applicant's written reports, maps, published articles or other materials the Board determines are appropriate to document the applicant's experience as a soil scientist;
- (3) Four references as defined in G.S. 89F-10(a)(1);
- (4) Signed copy of Code of Professional Conduct;
- (5) A notarized copy of a completed application form; and
- (6) The application fee as prescribed in Rule .0104 of this Chapter.

(b) Applicants for licensing under comity shall submit an application form along with the prescribed fee. The Board may require the submittal of additional information if necessary to determine if the applicant meets the requirements of G.S. 89F.

(c) Applicants for reinstatement of an expired license shall submit a reinstatement application and the prescribed fee.

(d) Applicants for reinstatement of a revoked or suspended license shall submit such information as is required by the Board, on a case-by-case basis, to determine their eligibility for reinstatement, and shall submit the prescribed fee.

(e) Applicants who do not meet the minimum qualification for education as defined in G.S. 89F-10 but have a specific record of 15 years or more experience in the practice of soil science of a grade and character that indicates to the Board that the applicant is competent to practice soil science shall be admitted to the written exami-

nation. The applicant shall show evidence of the practicing experience. Upon passing such examination, the applicant shall be granted a license to practice soil science in this State, provided other requirements of G.S. 89F and the rules in this Chapter are met.

Authority G.S. 89F-5; 89F-9; 89F-10; 89F-12.

**.0202 EXPIRATIONS AND RENEWALS OF CERTIFICATES**

(a) The annual renewal fee of fifty dollars (\$50.00) shall be payable to the Board. The Board shall send to each licensed soil scientist a form that requires the registrant to provide the Board with his business and residential address and to affix the registrant's North Carolina Licensed Soil Scientist seal thereupon. An applicant for renewal shall document continuing education as provided in Section .0300 of this Chapter. The completed forms along with the required fee shall be forwarded to the Board.

(b) All licenses will expire on July 1. Licenses that have not been renewed by September 1st may only be renewed by filing a restoration application and submitting a restoration fee.

(c) The Soil Scientist-in-Training certificate shall not expire and therefore does not have to be renewed.

Authority G.S. 89F-5.

**SECTION .0300 - CONTINUING PROFESSIONAL COMPETENCY****.0301 INTRODUCTION**

Every licensee shall meet the continuing professional education requirements of this Section as a condition for license renewal.

Authority G.S. 89F-5.

**.0302 DEFINITIONS**

Terms used in this Section are defined as follows:

- (1) Professional Development Hour (PDH) - One contact hour (nominal) of instruction or presentation.
- (2) College/Unit Semester/Quarter Hour - Credit assigned by a college or university for a completed course.
- (3) Course/Activity - Any course or activity with a clear purpose and objective that maintains, improves, or expands the skills and knowledge of the licensee.
- (4) Sponsor - Organization or individual that has supplied information on a form furnished by the Board with respect to the organization or individual's ability to provide instruction in "for credit" courses. Courses offered by those designated as "Sponsor" shall contain a clear purpose and objective, and result in the maintenance, improve-

ment, or expansion of skills and knowledge relevant to a licensee's field of practice. Courses offered by "Sponsors" are acceptable for PDH credit without scrutiny of individual course content.

- (5) Renewal Period for Continuing Professional Education - The period for accumulating the required PDH units shall be three years.

Authority G.S. 89F-5.

#### .0303 REQUIREMENTS

Every licensee shall obtain 45 PDH units during each three year period of licensing. If a licensee exceeds the required number of units in any triennial period, a maximum of 15 PDH units may be carried forward into the subsequent period. Selection of courses and activities which meet the requirements of Rule .0302(3) of this Section shall be the responsibility of the licensee. Licensees have the option of selecting courses other than those offered by sponsors. Post evaluation of courses offered by other than sponsors as defined in Rule .0302(4) of this Section may result in non-acceptance. PDH units may be earned as follows:

- (1) Completion of college courses.
- (2) Completion of continuing education courses.
- (3) Completion of correspondence, televised, videotaped, audio taped, and other short courses/tutorials.
- (4) Presenting or attending seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions or conferences.
- (5) Teaching or instructing in Items (1) through (4) of this Rule.
- (6) Authoring published papers, articles, or books.
- (7) Active participation in professional or technical societies.
- (8) Patents.

Authority G.S. 89F-5.

#### .0304 UNITS

The conversion of other units of credit to PDH units is as follows:

- (1) 1 College or unit semester hour 15 PDH;
- (2) 1 College or unit quarter hour 10 PDH;
- (3) 1 Hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions or conference 1 PDH;
- (4) For teaching in Items (1) - (4) of this Rule, PDH credits are doubled\*;
- (5) Each published paper, article or book 10 PDH;
- (6) Active participation in professional and technical society. (Each organization.) 2 PDH;
- (7) Each patent 10 PDH.

\*Teaching credit is valid for teaching a course or seminar for the first time only.

Authority G.S. 89F-5.

#### .0305 DETERMINATION OF CREDIT

The Board for Licensing of Soil Scientists shall have final authority with respect to approval of courses, sponsors, credit, PDH value for courses, and other methods of earning credit. PDH credits are not earned until the activity is completed or until the end of each year of service is completed. The following criteria will be used in determining PDH credits:

- (1) Credit for college or community college courses will be based upon course credit established by the college.
- (2) Credit for seminars and workshops, shall be based on one PDH unit for each hour of attendance.
- (3) Attendance at programs presented at professional and technical society meetings shall earn PDH units for the actual time of each program with a maximum of 15 for a given meeting.
- (4) Credit determination for published papers, articles and books and obtaining patents is the responsibility of the licensee with final approval by the Board.
- (5) Credit for active participation in professional and technical societies (limited to 2 PDH per organization), requires that a licensee serve as an officer or actively participate in a committee of the organization. PDH credits shall not be earned until the end of each year of service is completed.

Authority G.S. 89F-5.

#### .0306 RECORDKEEPING

(a) Each licensee shall maintain records to be used to support credits claimed. Records required include, but are not limited to:

- (1) a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned;
- (2) attendance verification records in the form of completion certificates, or other documents supporting evidence of attendance.

(b) These records shall be maintained for a period of three years and copies may be requested by the board for audit verification purposes.

Authority G.S. 89F-5.

#### .0307 EXEMPTIONS

A licensee shall be exempt from the continuing professional development educational requirements for one of the following reasons:

- (1) A licensee serving on temporary active duty in the

- armed forces of the United States for a period of time exceeding 120 consecutive days in a year shall be exempt from obtaining the continuing professional education hours required during that year.
- (2) Licensees experiencing physical disability (as defined in G.S. 168A), illness, or other circumstances beyond the control of the licensee as reviewed and approved by the Board may be exempt. Supporting documentation shall be furnished to the Board.
- (3) Licensees who list their occupation as "Inactive" on the renewal form and who further certify that they are no longer receiving any remuneration from providing professional soil services shall be exempt from the continuing professional education hours required. In the event such a person elects to return to active soil science practice, professional development hours shall be earned in accordance with the requirements of Rule .0308 in this Section before returning to active practice.

Authority G.S. 89F-5.

#### .0308 REINSTATEMENT

A licensee may bring an inactive license to active status by obtaining all delinquent PDH units and paying the restoration fee. However, if the total number required to become current exceeds 30, then 30 shall be the maximum number required.

Authority G.S. 89F-5.

### SECTION .0400 - STANDARDS OF PROFESSIONAL CONDUCT

#### .0401 CODE OF PROFESSIONAL CONDUCT

(a) A soil scientist shall conduct his practice in order to protect the public health, safety and welfare. The soil scientist shall at all time recognize his primary obligation to protect the safety, health, and welfare of the public in the performance of his professional duties.

(b) A soil scientist shall perform his services only in areas of his competence and:

- (1) shall undertake to perform assignments only when qualified by education or experience in the specific technical field of soil science involved.
- (2) shall not affix his signature or seal to any document dealing with subject matter to which he lacks competence by virtue of education or experience, nor to any such plan or document not prepared under his direct supervisory control except that the soil scientist may affix his seal and signature to documents depicting the work of two or more professionals provided he designates by note under his seal the specific subject matter for which he is responsible.

- (c) A soil scientist shall issue public statements only in an objective and truthful manner and:
- (1) shall be completely objective and truthful in all professional reports, statements or testimony. He shall include relevant and pertinent information in such reports, statements or testimony.
  - (2) when serving as an expert or technical witness before any court, commission, or other tribunal, shall express an opinion only when it is founded upon knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of his testimony.
  - (3) shall issue no statements, criticisms, or arguments on soil science matters connected with public policy which are inspired or paid for by an interested party, or parties unless he has prefaced his comment by explicitly identifying himself, by disclosing the identities of the parties on whose behalf he is speaking, and by revealing the existence of any pecuniary interest he may have in the instant matters.
  - (4) shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of another soil scientist, nor shall he indiscriminately criticize another soil scientist's work in public. If he believes that another soil scientist is guilty of misconduct or illegal practice, he shall present such information to the proper authority for action.
- (d) A soil scientist shall avoid conflicts of interest and:
- (1) shall promptly inform his employer or client of any business association, interest, or circumstances which could influence his judgment or the quality of his services.
  - (2) shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products without full disclosure.
  - (3) shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with his client or employer in connection with work for which he is responsible.
  - (4) when in public service as a member, advisor, or employee of a governmental body or department, the soil scientist shall abstain from voting on matters involving services provided by him or his organization in private soil science practices.
  - (5) shall not solicit or accept a contract from a governmental body on which a principal or officer of his organization serves as a member without full disclosure to affected parties.
  - (6) shall not attempt to supplement another soil scientist in a particular employment after becoming aware that the other has been selected for the employment.

- (e) A soil scientist shall solicit or accept work only on the basis of his qualifications and:
- (1) shall disclose to affected parties any payment, either directly or indirectly, any commission, political contribution, or a gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies.
  - (2) shall compete for professional employment on the basis of qualification and competence for proper accomplishment of the work. He shall not solicit or submit proposals for professional services containing a false, fraudulent, misleading deceptive or unfair statement or claim regarding the cost, quality or extent of services to be rendered.
  - (3) shall not falsify or permit misrepresentation of his, or his associates', academic professional qualification. He shall not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, joint ventures, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and his work.
  - (4) shall not knowingly associate with or permit the use of his name or firm name in a business venture by any person or firm which he knows, or has reasons to believe, is engaging in business or professional practices of a fraudulent or dishonest nature.
  - (5) if the soil scientist has knowledge or reason to believe that another person or firm may be in violation of any of these provisions or of the North Carolina Soil Scientist Licensing Act, he shall present such information to the Board and shall cooperate with the Board in furnishing such further information or assistance as may be required by the Board.
- (e) A soil scientist whose professional registration is revoked or suspended by another jurisdiction, shall be subject to disciplines by the Board if the registrant's actions violate G.S. 89F or the rules in this Chapter. Conviction of a felony without restoration of civil rights, or the revocation or suspension of the license of a soil scientist by another jurisdiction, if for a cause which in the State of North Carolina would constitute a violation of G.S. 89F or of these Rules, shall be grounds for a charge of violation of the rules in this Chapter.

Authority G.S. 89F-17.

**.0402 RULES OF CONDUCT OF ADVERTISING**

- (a) A soil scientist shall not make exaggerated, misleading, deceptive or false statements or claims about his

professional qualifications, experience or performance in his brochures, correspondence, listings or other public communications.

(b) The prohibitions listed in Paragraph (a) of this Rule include, but are not limited to, the use of statements containing a material misrepresentation of fact or omitting a material fact necessary to keep the statement from being misleading; statements intended or likely to create an unjustified expectation; statements containing prediction of future success; or statements containing an opinion as to the quality of services.

(c) Consistent with the foregoing, a soil scientist may advertise for recruitment of personnel.

(d) Consistent with the foregoing, a soil scientist may prepare articles for the lay or technical press. Such articles shall not imply credit to the author for work performed by others.

Authority G.S. 89F-17.

**SECTION .0500 - DISCIPLINARY ACTION AND PROCEDURE**

**.0501 IMPROPER PRACTICE BY LICENSEE**

(a) Duty of the Board. When the Board becomes aware of an alleged violation, it shall send a "letter of inquiry" to the soil scientist allegedly involved and to the complainant. The soil scientist shall reply to this and any other inquiry of the Board within 30 calendar days. Failure to respond will constitute violation of the rules in this Chapter. After receiving and considering the response from the soil scientist, the Board may send additional letters of inquiry to the soil scientist and other persons allegedly involved.

(b) Findings of the Board. Upon consideration of responses to inquiries, the Board shall determine what action shall be taken:

- (1) if the Board determines that no disciplinary action is necessary, all parties previously contacted shall be so informed;
- (2) if the Board determines that the infraction is deemed minor, then the licensee may be offered a "letter of warning". This "letter of warning" shall note the licensee's acceptance of such action by the Board and shall specify the Board's cause for concern. Other persons previously contacted shall be informed that the Board has acted upon the matter;
- (3) if the Board determines that a formal hearing should be held, G.S. 150B is applicable;
- (4) if the Board determines that another person allegedly involved is licensed by the State, relevant information shall be sent by letter to the respective professional board.

Authority G.S. 89F-5; 89F-18; 89F-20; 89F-22.

The Codifier of Rules has entered the following temporary rule(s) in the North Carolina Administrative Code. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.

**TITLE 10 - DEPARTMENT OF HUMAN RESOURCES**

**Rule-making Agency:** *Social Services Commission*

**Rule Citation:** *10 NCAC 41P .0002, .0005, .0006, .0008, .0009, .0010, .0011 and .0012*

**Effective Date:** *July 1, 1996*

**Findings Reviewed by Julian Mann, III:** *Approved*

**Authority for the rule-making:** *G.S. 48*

**Reason for Proposed Action:** *The 1995 General Assembly found it in the public interest to clarify the judicial process for adoptions to promote the integrity and finality of adoptions, and to encourage prompt, conclusive dispositions of adoption proceedings. Toward this end, SB 159 was ratified. This action included rewriting many of the adoption laws contained in G.S. 48. The amendments proposed to 10 NCAC 41P will provide for implementation of those changes.*

**Comment Procedures:** *Anyone wishing to comment should contact Sharneese Ransome, Special Assistant to the Director, North Carolina Division of Social Services, 325 N. Salisbury St., Raleigh, NC 27603, (919) 733-3055.*

**CHAPTER 41 - CHILDREN'S SERVICES**

**SUBCHAPTER 41P - CHILD-PLACING AGENCIES: ADOPTION**

**.0002 ORGANIZATION AND ADMINISTRATION**

(a) Persons licensed or seeking license to provide adoption services shall comply with administrative and organizational requirements of 10 NCAC 41N, Chapter 48 of the General Statutes of North Carolina, and G.S. 110-57.1 et seq.

(b) Persons licensed or seeking license to provide adoption services shall meet staffing regulations set forth in 10 NCAC 41O, except that the executive director employed after the effective date of these regulations shall have a masters degree in social work or related area of study from an accredited school, and at least four years of experience in a child-placement agency, at least two of which must have been in administration.

(c) The caseload of social workers providing adoption services must be limited to allow for the required contacts with biological parents and families, children, adoptive families and collateral parties. A case is defined as any of

the following:

- (1) an expectant parent or parents receiving problem pregnancy services from the agency prior to the child's birth and ~~release~~ relinquishment for adoption;
- (2) biological parents receiving services from the agency following ~~release~~ relinquishment of the child to the agency for adoption;
- (3) a child or sibling group to be placed together referred to the agency for adoptive placement from another licensed or authorized child-placing agency and for whom an adoption home is being sought and considered;
- (4) a child, or siblings, together with biological parents for as long as the legal parent and child relationship exists;
- (5) a child, or siblings for whom the goals for adoption are the same, following ~~release~~ relinquishment for adoption;
- (6) a single person or married couple applying for or licensed to provide foster care for children released for adoption to the agency;
- (7) a single person or married couple applying for or approved for adoptive placement of a child or children;
- (8) a child or sibling group and adoptive parents after placement occurs; and
- (9) biological parents, or adoptive parents and adopted child, or adoptive parents and adoptee following entry of the ~~final order for adoption~~ decree of adoption.

**History Note:** Authority G.S. 131D-10.3; 131D-10.5; 143B-153; 48-3-204;

**Eff.** February 1, 1986;

**Amended Eff.** June 1, 1990;

**Temporary Amendment Eff.** July 1, 1996.

**.0005 PLACEMENT SERVICES TO FAMILIES AND CHILDREN**

(a) Persons licensed or seeking license to provide adoption services shall comply with regulations set forth in 10 NCAC 41O.

(b) Additionally, those persons providing as part of their adoption services program problem pregnancy services shall:

- (1) respect the client's prerogative for choice of alternatives to the problem pregnancy;
- (2) assure the clients of confidential handling of and restricted access to the case record;
- (3) offer alternate plans of care for the child and give supportive services or make appropriate referrals to other resources, should the client elect to keep the child in the family instead of releasing the

- child for adoption; and
- (4) assist the client in obtaining maternity home care during her pregnancy, if desired and appropriate.
- (c) The agency shall help those parents reaching the decision to release relinquish their children to the agency for adoptive placement to have a thorough understanding of the meaning of adoption and its potential impact on the child's and their lives. The agency may notify the parent when a placement has occurred and when an adoption decree is issued.

(d) At the point a parent executes the written release, surrender, and general consent to adopt, relinquishment for adoption, the agency shall ascertain that the parent has a thorough understanding of the effects of this action and of the time period allowed for revocation of the release, surrender, and general consent to adoption, relinquishment for adoption. When the agency has received the parent's release, surrender, and general consent to adoption, relinquishment for adoption, the executive director or administrator must indicate acceptance of the parent's release relinquishment document by signing the appropriate form for this purpose. A copy of the parent's release, surrender, and general consent to adoption, relinquishment for adoption and of the agency's acceptance must be given to the parent. The Director or Administrator shall designate the agency's supervisor of adoptions or the adoptions social worker handling the case to accept the parent's release, surrender, and general consent to adoption, relinquishment for adoption in the event the Director or Administrator will not be available to perform this task in person. An agency may acquire legal and physical custody of a minor for purposes of adoptive placement only by means of a relinquishment pursuant to G.S. 48, Article 1, Part 7 or by terminating the rights and duties of a parent or guardian of the minor.

(e) In addition to providing services to the child in compliance with 10 NCAC 410, agencies providing adoption services shall involve a child in the selection of an adoptive home and in preparation for adoptive placement, as is appropriate to the age of the child.

*History Note: Authority G.S. 131D-10.5; 143B-153; 48-3-204;*

*Eff. February 1, 1986;*

*Amended Eff. June 1, 1990;*

*Temporary Amendment Eff. July 1, 1996.*

#### **.0006 ADOPTIVE HOME RECRUITMENT**

The agency shall have a written plan for on-going recruitment of adoptive homes for the children it places or plans to place for adoption. The plan must include resources to be used, time-related goals for applicant recruitment, and any limitations or restrictions that may be inherent to its program. The plan must indicate designated staff and funding sources for implementation of the plan. Agencies shall have a plan which actively recruits homes of the same race or ethnic category as that of the children it serves. A child's race and ethnic background must be

considered in determining the most suitable adoptive placement, but the agency shall not prohibit the placement of a child for adoption with persons of a different race or ethnic category. An agency may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective adoptive parents to meet the needs of a child as one of the number of factors used to determine the best interest of the child but shall not delay or deny placement of a child for adoption solely on the basis of race, color, or national origin of the adoptive parent or the child.

*History Note: Authority G.S. 131D-10.5; 143B-153; 48-3-204;*

*Eff. February 1, 1986;*

*Amended Eff. March 1, 1992;*

*Temporary Amendment Eff. July 1, 1996.*

#### **.0008 PREPLACEMENT ASSESSMENT**

(a) The agency shall conduct an adoptive study with its applicants, a preplacement assessment within 90 days after the request has been accepted. The study assessment process must include at least one office visit with the adoptive applicants, one home visit, and personal interview, and separate face-to-face interviews with each member of the household above six years of age. The study assessment process must be a joint effort of the adoption agency and the applicants to determine the kind of child the applicants can best parent. Any study assessment that was completed one year or more before placement of a child occurs must be updated to include current information about the family. The updated study shall focus on applicable items in Paragraph (b) of this Rule where change could be expected to have occurred. Physical examinations of family members must be current to within 12 months of the updated study assessment.

(b) The agency shall study assess the following areas and shall record the information in the adoptive applicants' record:

- (1) the applicants' motivation for adoption; reasons for wanting to adopt;
- (2) the strengths and weaknesses needs of each member of the household;
- (3) the attitudes and feelings of the family, extended family, and significant others involved with the family toward accepting adoptive children, and parenting children not born to them;
- (4) the attitudes of the applicants toward the biological parents and in regard to the reasons the child is in need of adoption;
- (5) the applicants' attitudes toward child behavior and discipline;
- (6) the applicants' plan for discussing adoption with the child;
- (7) the emotional stability and maturity of applicants;
- (8) the applicants' ability to cope with problems, stress, frustrations, crises, and loss;
- (9) the applicants' ability to give and receive affec-

- (10) ~~the applicants' child-caring skills and willingness to acquire additional skills needed for the child's development;~~
- (11) ~~the applicants' ability to provide for the child's physical and emotional needs;~~
- (12) ~~the applicants' record of criminal convictions; whether the applicant has ever been convicted of a crime other than a minor traffic violation;~~
- (13) ~~the adjustment strengths and needs of birth children or previously adopted children, including school reports, if applicable;~~
- (14) ~~report of a physical examination by a licensed medical provider for members of the adoptive family living in the household within six months of the study that verifies no communicable disease, specific illness, or disabilities that would interfere with the family's abilities to parent a child pose a direct threat to a child which may pose a significant risk of transmission in the home; the applicant's physical and mental health, including any addiction to alcohol or drugs;~~
- (15) ~~the applicants' ability to provide financially for the child or children to be adopted with or without agency financial assistance through adoption subsidy; current financial information provided by the applicant, including property and income;~~
- (16) ~~the applicants' personal character references;~~
- (19) ~~the plan for child care if parents work; and~~
- (20) ~~recommendations for adoption in regard to the number, age, sex, characteristics, and special needs of children who could be best served by the family;~~
- (21) ~~any previous request for an assessment or involvement in an adoptive placement and the outcome of the assessment or placement;~~
- (22) ~~whether the individual has ever been a respondent in a domestic violence proceeding or a proceeding concerning a minor who was allegedly abused, neglected, abandoned, or delinquent, and the outcome of the proceeding;~~
- (23) ~~whether the applicant has located a parent interested in placing a child for adoption with the applicant, and a brief, non identifying description of the parent and the child;~~
- (24) ~~the applicants' age, date of birth, nationality, race or ethnicity, and any religious preference;~~
- (25) ~~the applicant's marital and family status and history, including the presence of any children born to or adopted by the applicant, and any other children in the household;~~
- (26) ~~the applicant's educational and employment history and any special skills; and~~
- (27) ~~any additional fact or circumstance that may be relevant to a determination of the applicant's suitability to be an adoptive parent, including the quality of the home environment and the level of~~

functioning of any children in the household.

When any of the information listed in this Paragraph is not reasonably available, the preplacement assessment shall state why the information is unavailable.

(c) The adoptive home study assessment must be prepared and typed for review by the agency's adoption review committee, and it must become part of the applicants' permanent record.

(d) Narrative dictation during the provisional period of licensure must be recorded by agency staff providing problem pregnancy services, conducting adoptive studies, and providing post placement services following each contact with the child, biological parents, and adoptive parents and this dictation must become part of the permanent record. Once the agency has made a decision regarding the suitability of the applicant as an adoptive placement, the preplacement assessment shall include specific documentation of the factors which support that determination. If the agency determines that the applicant is not suitable to be an adoptive parent, the assessment shall include specific documentation of the factors which support that determination.

*History Note: Authority G.S. 131D-10.5; 143B-153; 48-3-303; 48-2-502;*

*Eff. February 1, 1986;*

*Amended Eff. August 1, 1993; March 1, 1992; June 1, 1990;*

*Temporary Amendment Eff. July 1, 1996.*

#### **0009 NOTIFICATION REGARDING PREPLACEMENT ASSESSMENT**

(a) The agency shall notify applicants in writing within 30 days of completion of the adoptive study preplacement assessment of the acceptance or denial of their application.

(b) When applicants are not accepted, the agency shall share with them the reasons a child cannot be placed in their home. The agency shall offer services to the applicants to assist them in adjusting to the decision.

(c) If the applicant disagrees with the unfavorable preplacement assessment, the applicant may request an internal review by the agency director.

(d) The applicant, after exhausting the agency's procedures for internal review, may prepare and file a written response with the Division of Social Services and the agency. The Division shall acknowledge receipt of the response within 30 days, but shall have no authority to take any action with respect to the response. A copy of the response shall be attached to the unfavorable assessment.

(e) Following an unfavorable preplacement assessment being filed with the Division, the county department of social services shall be notified by the Division, and shall take appropriate action regarding any child placed in the home of the prospective adoptive parent who is the subject of the unfavorable assessment.

(f) An unfavorable preplacement assessment and any response filed with the Division under this section shall not

be public records as set forth in G.S. 132.

*History Note: Authority G.S. 131D-10.5; 143B-153; 48-3-303;*

*Eff. February 1, 1986;*

*Temporary Amendment Eff. July 1, 1996.*

#### **.0010 SERVICES TO ADOPTIVE APPLICANTS AND FAMILIES**

(a) ~~The agency shall provide services to adoptive applicants to assist them in making an informed decision about adoption. The agency shall provide the opportunity for the applicants to participate in the adoptive study and in the assessment of their potential for meeting the needs of the children available for adoption. The agency shall provide upon request a written statement of the services it provides and of its procedure for selecting a prospective adoptive parent for a child, including the role of the child's parent or guardian in the selection process. This statement must include a schedule of any fees or expenses charged by the agency and a summary of the provisions of G.S. 48 that pertain to the requirements and consequences of a relinquishment and to the selection of a prospective adoptive parent.~~

(b) ~~The agency shall discuss the children potentially available for adoption with the adoptive applicants. The selection of a prospective adoptive parent for a minor shall be made by the agency, and based on the preplacement assessment. The selection may be based on criteria requested by a parent who relinquishes the child to the agency.~~

(c) ~~Following completion of an approved adoptive study, a preplacement assessment, the agency shall prepare the adoptive applicants for the placement of a particular child. Preparation must include:~~

(1) information about the needs and expectations of the child and of the adoptive family;  
(2) information to the extent allowed by law as specified in G.S. 48-25 ~~48-3-205~~ about the child's background and the health history of the child's biological parents and other relatives; and  
(3) visits with the child prior to placement.

(d) ~~The agency worker shall visit in the home of the adoptive family at least quarterly after the placement of a child and prior to the final order of adoption. decree of adoption. The first visit must occur within two weeks after placement. Frequency of visits thereafter must shall be determined by the child's and family's needs. Observations made during the visits must shall be used in making recommendations to the court of adoptions in regard to the interlocutory decree and final order, decree of adoption, or in regard to dismissal of the adoption petition.~~

(e) ~~When applicable, the agency shall take steps necessary to assure that the adoptive placement comes into compliance with the interstate compact on the placement of children.~~

(f) ~~The agency shall make post-adoption services avail-~~

able to the adoptive parents, the biological parents, and the adoptee after the ~~final order~~ decree of adoption has been entered.

*History Note: Authority G.S. 48-1 et. seq.; 110-57.1; 131D-10-5; 143B-153; 48-3-204;*

*Eff. February 1, 1986;*

*Temporary Amendment Eff. July 1, 1996.*

#### **.0011 LEGAL PROCESS**

(a) ~~The agency shall instruct the adoptive parents in procedures regarding the legal process for adoption and shall encourage instruct them to file their adoption petition soon after placement occurs within 30 days.~~

(b) ~~The agency shall prepare and file the required consents and other legal documents and reports with the court of adoptions at the appropriate times once the adoption petition has been filed.~~

(c) ~~During the process of preparing court reports, the petitioner, and each member of the petitioner's home shall be interviewed in the petitioner's home. In addition, at least one interview shall be conducted in the presence of the petitioner and the adoptee to observe interactions between the them. The report to the court must be in writing and contain the information required by G.S. 48-2-502(b).~~

(d) ~~The agency shall give the petitioner a copy of each report filed with the court, and retain a copy, except, pursuant to G.S. 48-10-105, the agency shall not release to the petitioner a copy of any court order, judgment, decree, or pending legal proceeding containing identifying information.~~

*History Note: Authority G.S. 48-1 et.seq.; 131D-10.5; 143B-153; 48-2-502;*

*Eff. February 1, 1986;*

*Temporary Amendment Eff. July 1, 1996.*

#### **.0012 RECORDS**

(a) ~~The agency shall maintain children's and biological parent's records in accordance with ~~Regulations~~ rules set forth in 10 NCAC 410.~~

(b) ~~The agency shall keep separate records for each adoptive applicant and family. These records must contain the following:~~

- (1) application form;
- (2) copies of marriage certificates, if applicable;
- (3) documentation of marriage termination, if applicable;
- (4) current medical records on all family members and psychological or psychiatric reports, if applicable;
- (5) references from at least three sources;
- (6) ~~adoptive study preplacement assessment~~ conducted by the agency;
- (7) copies of correspondence to, from, and in regard to the applicants;
- (8) summary and dates and content of contacts prior

- to and following approval for adoption until the final order decree of adoption is entered;
- (9) copies of information given to the applicant and family concerning the child or children to be placed for adoption with them;
- (10) copies of all legal documents pertaining to the adoption; and
- (11) summary containing the placement decision, pre-placement and post-placement contacts with the family and child.
- (c) In the event the applicants were not accepted or did not have a child placed with them, the record shall contain a narrative clearly indicating the reasons and the manner in which the decision was presented to the applicants.
- (d) All individual child and adoptive family records shall be permanently retained by the agency. If necessary, the files must be microfilmed in accordance with provisions of G.S. 8-45.1, following which the original files must be destroyed by an authorized shredding process.
- (e) All child and adoptive applicant and family records must be kept in securely locked quarters and information from the files may shall be divulged only in compliance with provisions of G.S. 48-25. G.S. 48-9-105.

*History Note: Authority G.S. 131D-10.5; 143B-153; 48-3-303;*

*Eff. February 1, 1986;*

*Temporary Amendment Eff. July 1, 1996.*

\* \* \* \* \*

**Rule-making Agency:** *Department of Human Resources*

**Rule Citation:** *10 NCAC 41P .0013*

**Effective Date:** *July 1, 1996*

**Findings Reviewed by Julian Mann, III:** *Approved*

**Authority for the rule-making:** *G.S. 48-2-504; 48-3-304*

**Reason for Proposed Action:** *The 1995 General Assembly found it in the public interest to clarify the judicial process for adoptions to promote the integrity and finality of adoptions, and to encourage prompt, conclusive dispositions of adoption proceedings. Toward this end, Senate Bill 159 was ratified. This action included rewriting many of the adoption laws contained in G.S. 48. The adoption of this proposed rule will provide for implementation of these changes.*

**Comment Procedures:** *Anyone wishing to comment should contact Sharmese Ransome, Special Assistant to the Director, Division of Social Services, 325 N. Salisbury St., Raleigh, NC 27603, 919/733-3055.*

## CHAPTER 41 - CHILDREN'S SERVICES

## SUBCHAPTER 41P - CHILD-PLACING AGENCIES: ADOPTION

### .0013 FEES

(a) County departments of social services may charge reasonable fees for the preparation of a preplacement assessment or report to the court in accordance with G.S. 48-3-304(a) and G.S. 48-2-504(a). No fee shall be charged except pursuant to a written fee agreement which must be signed by the parties to be charged prior to the beginning of the preparation. The fee agreement shall not be based on the outcome of the report or the adoption proceeding.

(b) Maximum fees for the preparation of the reports shall not exceed:

- (1) One thousand five hundred dollars (\$1500) for the preplacement assessment and report to the court; and
- (2) Two hundred dollars (\$200) for report to the court only.

(c) No fee shall be charged when one or more of the following circumstances exists:

- (1) The head of household for the prospective adoptive family is an AFDC or SSI recipient;
- (2) The family unit's income is below the State's Established Income (or 150% of the 1992 Federal Poverty Level); or
- (3) The family has identified an adoptee who is in the custody and placement responsibility of the Department of Social Services, and provided that the adoptive family continues to pursue the adoption of the identified child.

(d) Fees for the above reports may be reduced or waived if it can be documented in the case record that the prospective adoptive family cannot pay the required fee, or if other reasons exist that would result in the fee becoming a barrier to the adoption. Unless reduced or waived, the entire fee shall be paid in accordance with local policy.

*History Note: Authority G.S. 48-2-504; 48-3-304; Temporary Adoption Eff. July 1, 1996.*

\* \* \* \* \*

**Rule-making Agency:** *Social Services Commission*

**Rule Citation:** *10 NCAC 49A .0002; 49B .0202, .0310 and .0502*

**Effective Date:** *July 1, 1996*

**Findings Reviewed by Julian Mann, III:** *Approved*

**Authority for the rule-making:** *G.S. 108A-25, 143B-153*

**Reason for Proposed Action:** *These rules are needed to implement prospective budgeting and quarterly reporting in the Aid To Families With Dependent Children (AFDC)*

Program.

**Comment Procedures:** Anyone wishing to comment on these proposed rules should contact Sharnese Ransome, APA Coordinator, Social Services Commission, NC Division of Social Services, 325 N. Salisbury St., Raleigh, NC 27603, (919) 733-3055.

## **CHAPTER 49 - AFDC**

### **SUBCHAPTER 49A - GENERAL PROGRAM ADMINISTRATION**

#### **.0002 DEFINITIONS**

The following definitions apply to this Chapter:

- (1) "Adjusted Payment" means a payment to the recipient to correct a county-responsible under-payment.
- (2) "Appeal" means an oral or written request from a client for a hearing to review the action of a county Department of Social Services when the client is dissatisfied with the decision in his case.
- (3) "Application Process" means a series of actions beginning with a signed application and ending the date a check or denial notice is mailed.
- (4) "Assistance Unit" means the total number of persons whose needs are considered in determining the payment amount.
- (5) "Budget Unit" means all those persons for whom application has been made plus anyone in the home who is liable for the support of a member of the assistance unit or whose income is counted as available to the assistance unit.
- (6) "Client" means member of the assistance unit. It may be used interchangeably with payee, recipient and applicant.
- (7) "Collateral" means a person or organization that can substantiate or verify information necessary to establish eligibility.
- (8) "Determination" means the process of verifying eligibility factors for persons applying for AFDC.
- (9) "Disregard of Earned Income" means the procedure for exempting certain portions of earned income as a resource when determining the amount of payment.
- (10) "Effective Date" means the date for which the benefit is authorized.
- (11) "Eligibility, Initial" means the state of eligibility at time of application.
- (12) "Essential Person" means a person who gives an essential service to a client, and, if in need, is eligible to be included in the assistance unit.
- (13) "Excluded Income" means money received by a member of the budget unit which is not counted in determining eligibility for assistance.
- (14) "Father, Alleged" means the man who is said without proof to be the father of a child. This

includes a father who has admitted paternity when paternity has not been established in a court of law.

- (15) "Father, Legal" means:
  - (a) The man who is married to the mother of child at the time of birth of the child, regardless of whether they are living together. The legal father is not necessarily the natural father, but is legally responsible for support; or
  - (b) A man who has been determined by the court to be the father of the child through a paternity suit or by act of legitimization; or
  - (c) A man who has legally adopted the child.
- (16) "Father, Natural" means the biological father of the child. He may be the alleged or legal father.
- (17) "Full-Time Student" means a student so designated by the school in which he is enrolled.
- (18) "Minor Mother" means a mother who is under the age of 18 who may be payee for an assistance unit or a recipient included in another assistance unit.
- (19) "Needy Spouse" means the husband or wife of a specified relative (other than a parent) who is eligible to be included in the assistance unit if he applies for assistance and meets the requirements of an essential person.
- (20) "Payee" means the person in whose name the AFDC payment is made.
- (21) "Payment Month" means the month for which the payment is made.
- (22) "Prospective Budgeting" means the best estimate of income in the payment month. ~~Use when determining benefits for the first two payment months.~~
- (23) "Reapplication" means a subsequent application when a case has been terminated or suspended.
- (24) "Recipient" means an eligible person whose needs are included in the assistance payment.
- (25) "Remainder Interest" means property which will be inherited in full at a life estate interest holder's death.
- (26) "Revocable Trust" means funds held in trust which are available for the client's use.
- (27) "Verification" means the confirmation of facts and information used in determining eligibility.

*History Note: Authority G.S. 108A-25; 143B-153; 45 C.F.R. 233;*

*Eff. February 1, 1984;*

*Amended Eff. June 1, 1990; August 1, 1988; February 1, 1986;*

*Temporary Amendment Eff. July 1, 1996..*

### **SUBCHAPTER 49B - ELIGIBILITY DETERMINATION**

## SECTION .0200 - APPLICATION PROCESS

## .0202 INITIAL INTERVIEW

The applicant shall be allowed to have any person(s) of his choice participate in the interview. The applicant shall be informed of the following:

- (1) He must provide:
    - (a) the names of collaterals, such as landlords, employers, and others with knowledge of his situation;
    - (b) information about his resources;
    - (c) verification of his earned income and any operational expenses;
    - (d) his Social Security number unless he has lost his card;
    - (e) medical forms when appropriate;
    - (f) work registration card from ESC;
    - (g) statement from a dealer when verified equity of a motor vehicle is disputed;
    - (h) evidence of good cause claim for non-cooperation with the child support enforcement agency;
    - (i) verification of the amount of a lump sum payment and other required information regarding the lump sum;
    - (j) verification of stepparent's income and verification of income of a minor parent's parent or legal guardian; and
    - (k) signed statement from a doctor or medical facility substantiating a pregnancy and the expected due date.
  - (2) It is the county's responsibility to use collateral sources to substantiate or verify information necessary to establish eligibility. Collateral sources of information include knowledgeable individuals, business organizations, public records, and documentary evidence. If the applicant does not wish necessary collateral contacts to be made, he can withdraw the application. If he denies permission to contact necessary collaterals, the application shall be rejected due to failure to cooperate in establishing eligibility.
  - (3) A worker will visit his home at the county's option. The county's decision to make a home visit will be based on error-prone characteristics defined by the state using quality control and other management data.
  - (4) The applicant has the right to:
    - (a) receive assistance if found eligible;
    - (b) be protected against discrimination on the grounds of race, creed, or national origin by Title VI of the Civil Rights Act of 1964. He may appeal such discrimination;
    - (c) spend his assistance payment as he wishes, but it must be in his best interest and that of his family. A substitute payee may be appointed for those individuals who cannot manage the payments;
  - (d) receive his monthly check in advance until the payment is terminated by appropriate action;
  - (e) have any information given to the agency kept in confidence;
  - (f) appeal, if his assistance will be denied, changed or terminated, his payment is incorrect based on the agency's interpretation of state regulations, or his request for a change in the amount of assistance was delayed beyond 30 days or rejected;
  - (g) reapply at any time, if found ineligible; and
  - (h) withdraw from the assistance program at any time.
- (5) The applicant's responsibilities. He must:
- (a) provide the county department, state and federal officials, the necessary sources from which the county department can locate and obtain information needed to determine eligibility;
  - (b) report to the county department of social services any change in situation that may affect eligibility for a check within five 10 calendar days after it happens. he learns of the change. The meaning of fraud shall be explained. The applicant shall be informed that he may be suspected of fraud if he fails to report a change in situation and that in such situations, he may have to repay assistance received in error and that he may also be tried by the courts for fraud;
  - (c) inform the county department of social services of any person or organization against whom he has a right to recovery. When he accepts medical assistance (included with any AFDC), the applicant assigns his rights to third party insurance benefits to the state. He shall be informed that it is a misdemeanor to fail to disclose the identity of any person or organization against whom he has a right to recovery;
  - (d) immediately report to the county department the receipt of a check which he knows to be erroneous, such as two checks for the same month, or a check in the wrong amount. If he does not report such payments, he may be required to repay any overpayment.

*History Note: Authority G.S. 108A-43; 143B-153; 45 C.F.R. 206.10;*

*Eff. February 1, 1984;*

*Amended Eff. June 1, 1990; February 1, 1986;*

*Temporary Amendment Eff. July 1, 1996.*

## SECTION .0300 - ELIGIBILITY FACTORS

**.0310 PROSPECTIVE BUDGETING AND QUARTERLY REPORTING**

~~In addition to the requirements found in 45 CFR 233.36 which is hereby adopted by reference under G.S. 150B-14(e), monthly reporting shall be required on other error-prone classes of recipients as defined by the state based on quality control and other management data.~~

(a) Income shall be budgeted prospectively for determining eligibility for and the amount of AFDC payments. To arrive at a monthly amount to consider, the following processes shall be followed.

- (1) For income that is paid on less than a monthly basis, the pay received from each period during a month shall be averaged and converted to a monthly amount as follows. Averaged pay shall be multiplied by:
  - (A) 2 if pay is received twice per month
  - (B) 2.15 if pay is received every two weeks
  - (C) 4.3 if pay is received weekly
- (2) For income that is received once per month, the amount received from two previous successive months shall be averaged to arrive at one monthly amount.
- (3) Annualized self-employment income shall be averaged over the lesser of the following period the number of months the business has been in operation or 12 months.

(b) The monthly income calculated in Paragraph (a) of this Rule shall be used to determine the AFDC payment for 3 consecutive calendar months.

(c) Quarterly reporting shall be required for error-prone classes of recipients as defined by the state based on quality control and other management data. The quarterly reporting process shall follow the processing requirements found in 45 CFR 233.37 which is hereby incorporated by reference including all subsequent amendments and editions. Copies of this Code of Federal Regulations may be obtained from the Division of Social Services, 325 North Salisbury Street, Raleigh, N. C. 27603 (telephone number (919) 733-3055 at a cost of ten cents (\$.10) per page at the time of adoption of this Rule.

(d) AFDC families shall be required to report all changes within 10 calendar days after they become aware a change has occurred.

learns of the change.

(b) The change shall be evaluated and appropriate action effective as early as the next month but never later than two months following the date the change is reported.

*History Note: Authority G.S. 143B-153; 45 C.F.R. 206.10;*

*Eff. February 1, 1984;*

*Amended Eff. June 1, 1990; February 1, 1986;*

*Temporary Amendment Eff. July 1, 1996.*

**SECTION .0500 - REDETERMINATION OF ELIGIBILITY**

**.0502 CHANGES IN SITUATION**

(a) Each client shall be required to report any change in his situation within five 10 calendar days after it occurs. he

This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of June 20, 1996 pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or rules which notice in the Register was not required. The rules published in full text are identified by an \* in the listing of approved rules.

APPROVED RULE CITATION

15A NCAC 18A .2701 \*

REGISTER CITATION TO THE  
NOTICE OF TEXT

Not Required, G.S. 150B-21.5

**TITLE 15A - DEPARTMENT OF ENVIRONMENT,  
HEALTH, AND NATURAL RESOURCES**

**CHAPTER 18 - ENVIRONMENTAL HEALTH**

**SUBCHAPTER 18A - SANITATION**

**SECTION .2700 - SANITATION OF MEAT  
MARKETS**

**.2701 DEFINITIONS**

The following definitions shall apply throughout this Section:

- (1) "Approved" means determined by the Department to be in compliance with this Section. Food service equipment which meets National Sanitation Foundation Standards or equal shall be considered as approved. National Sanitation Foundation standards are adopted incorporated by reference ~~in accordance with G.S. 150B-14(e)~~ including subsequent amendments and editions. These standards may be obtained from the National Sanitation Foundation, P.O. Box 1468, Ann Arbor, Michigan ~~48106 48106, at a cost of four hundred and fifty dollars (\$450.00)~~, and are also available for inspection at the Division of Environmental Health. Food which complies with requirements of the North Carolina Department of Agriculture or United States Department of Agriculture and the requirement of this Section shall be considered as approved.
- (2) "Department" means the North Carolina Department of Environment, Health, and Natural Resources. The term also means the authorized representative of the Department.
- (3) "Employee" means any person who is employed in the handling or processing of meat, meat food products, poultry, or poultry products, or in the cleaning of utensils or equipment.
- (4) "Local Health Director" means the administrative head of a local health department or his authorized representative.

- (5) "Meat" and "meat food products" mean meat and meat food products as defined in G.S. 106-549.15(14).
- (6) "Meat market" means a meat market as defined in G.S. ~~130A-228, 130A-247~~, except, those places subject to G.S. 130A-229.
- (7) "Person" means an individual, firm, association, organization, partnership, business trust, corporation, or company.
- (8) "Poultry" and "poultry products" mean poultry and poultry products as defined in G.S. 106-549.51(25).
- (9) "Sanitarian" means a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.
- (10) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2600.

*History Note: Authority G.S. 130A-248;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. April 1, 1997; May 1, 1991; July 1, 1984;  
June 10, 1978.*

**T**

*The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.*

**K**ey:

<i>Citation</i>	= <i>Title, Chapter, Subchapter and Rule(s)</i>
<i>AD</i>	= <i>Adopt</i>
<i>AM</i>	= <i>Amend</i>
<i>RP</i>	= <i>Repeal</i>
<i>With Chgs</i>	= <i>Final text differs from proposed text</i>
<i>Corr</i>	= <i>Typographical errors or changes that requires no rulemaking</i>
<i>Temp.</i>	= <i>Rule was filed as a temporary rule</i>
<i>Eff. Date</i>	= <i>Date rule becomes effective</i>

**NORTH CAROLINA ADMINISTRATIVE CODE**

**JUNE 96**

<b>TITLE</b>	<b>DEPARTMENT</b>	<b>TITLE</b>	<b>DEPARTMENT</b>
10	Human Resources	21	Occupational Licensing Boards
11	Insurance		1 - Acupuncture
12	Justice		32 - Medical Examiners
15A	Environment, Health, and Natural Resources		37 - Nursing Home Administrators
16	Public Education		46 - Pharmacy
17	Revenue		54 - Practicing Psychologists
18	Secretary of State		58 - Real Estate Commission
		25	68 - Substance Abuse Professionals
			State Personnel

<b>RULE CITATION</b>	<b>AD</b>	<b>AM</b>	<b>RP</b>	<b>WITH CHGS</b>	<b>CORR</b>	<b>TEMP</b>	<b>EFFECTIVE DATE</b>
10 NCAC 3C .6208		✓					08/01/96
26B .0105		✓		✓			08/01/96
41P .0002		✓				✓	07/01/96
.0005 - .0006		✓				✓	07/01/96
.0008 - .0012		✓				✓	07/01/96
.0013	✓					✓	07/01/96
49A .0002		✓				✓	07/01/96
49B .0202		✓				✓	07/01/96
.0310		✓				✓	07/01/96
.0502		✓				✓	07/01/96
50D .0101 - .0103	✓			✓			07/01/96
.0201	✓			✓			07/01/96
.0301 - .0302	✓			✓			07/01/96

**LIST OF RULES CODIFIED**

RULE CITATION		AD	AM	RP	WITH CHGS	CORR	TEMP	EFFECTIVE DATE
10	NCAC 50D .0401	✓			✓			07/01/96
	.0402	✓						07/01/96
	.0501 - .0503	✓			✓			07/01/96
11	NCAC 12 .0551		✓		✓			04/01/97
	16 .0703		✓					04/01/97
12	NCAC 2I .0101		✓					08/01/96
	.0206		✓					08/01/96
	.0210		✓					08/01/96
15A	NCAC 2B .0315		✓		✓			07/01/96
	2D .0101		✓					07/01/96
	.0501		✓		✓			07/01/96
	.0516		✓					07/01/96
	.0518		✓		✓			07/01/96
	.0519		✓					07/01/96
	.0520			✓				07/01/96
	.0521		✓		✓			07/01/96
	.0524		✓		✓			07/01/96
	.0525			✓				07/01/96
	.0531		✓		✓			07/01/96
	.0535		✓		✓			07/01/96
	.0537		✓					07/01/96
	.0539	✓			✓			07/01/96
	.0601		✓					07/01/96
	.0604		✓		✓			07/01/96
	.0608		✓		✓			07/01/96
	.0804		✓					07/01/96
	.0805		✓		✓			07/01/96
	.0901		✓		✓			07/01/96
	.0902		✓					07/01/96
	.0917 - .0919		✓					07/01/96
	.0920		✓		✓			07/01/96
	.0921 - .0922		✓					07/01/96

**LIST OF RULES CODIFIED**

RULE CITATION	AD	AM	RP	WITH CHGS	CORR	TEMP	EFFECTIVE DATE
.0923		✓		✓			07/01/96
15A NCAC 2D .0924		✓					07/01/96
.0926 - .0927		✓		✓			07/01/96
.0928		✓					07/01/96
.0929			✓				07/01/96
.0934		✓		✓			07/01/96
.0935		✓					07/01/96
.0937		✓					07/01/96
.0951		✓					07/01/96
.0953 - .0954		✓		✓			07/01/96
.1109		✓		✓			07/01/96
.1110	✓						07/01/96
.1111	✓			✓			07/01/96
.1202		✓					07/01/96
.1204		✓		✓			07/01/96
.1205 - .1206		✓					07/01/96
.1901	✓						07/01/96
.1902 - .1904	✓			✓			07/01/96
.1905	✓						07/01/96
.1906	✓			✓			07/01/96
2H .0610		✓		✓			07/01/96
2Q .0103		✓		✓			07/01/96
.0109		✓		✓			07/01/96
.0201 - .0202		✓					07/01/96
.0203		✓		✓			07/01/96
.0204		✓					07/01/96
.0207		✓					07/01/96
.0302		✓					07/01/96
.0311		✓					07/01/96
.0501 - .0502		✓					07/01/96
.0503		✓		✓			07/01/96
.0507 - .0508		✓					07/01/96

**LIST OF RULES CODIFIED**

RULE CITATION	AD	AM	RP	WITH CHGS	CORR	TEMP	EFFECTIVE DATE
.0526	✓						07/01/96
7H .0208					✓		
15A NCAC 10F .0302					✓		
.0330					✓		
18A .1814			✓				08/01/96
20D .0243			✓		✓		08/01/96
21I .0101	✓					✓	07/08/96
21J .0101	✓					✓	07/08/96
16 NCAC 1A .0001			✓				04/01/97
.0003				✓			04/01/97
17 NCAC 5C .2101			✓		✓		08/01/96
6B .0612			✓		✓		08/01/96
.3716			✓		✓		08/01/96
7B .1101			✓		✓		08/01/96
.1105			✓				08/01/96
.1108 - .1110			✓				08/01/96
.1112			✓				08/01/96
.1114			✓				08/01/96
.1123			✓		✓		08/01/96
.1602			✓		✓		08/01/96
.1701 - .1702			✓		✓		08/01/96
.1802			✓		✓		08/01/96
.2401			✓		✓		08/01/96
.2601				✓			08/01/96
.4002			✓				08/01/96
.4004			✓				08/01/96
.4008			✓		✓		08/01/96
.4301			✓		✓		08/01/96
.4408			✓		✓		08/01/96
.4902			✓		✓		08/01/96
18 NCAC 9 .0112						✓	08/01/96
21 NCAC 1 .0705	✓				✓		08/01/96

**LIST OF RULES CODIFIED**

RULE CITATION		AD	AM	RP	WITH CHGS	CORR	TEMP	EFFECTIVE DATE
	.0709	✓			✓			08/01/96
32H	.0101			✓				08/01/96
	.0102		✓		✓			08/01/96
21	NCAC	32H	.0201	✓		✓		08/01/96
	.0301 - .0303		✓		✓			08/01/96
	.0401 - .0404		✓		✓			08/01/96
	.0406		✓		✓			08/01/96
	.0407		✓					08/01/96
	.0408		✓					08/01/96
	.0409	✓			✓			08/01/96
	.0501 - .0502		✓		✓			08/01/96
	.0504 - .0506		✓		✓			08/01/96
	.0507	✓			✓			08/01/96
	.0601		✓		✓			08/01/96
	.0602		✓					08/01/96
	.0701		✓		✓			08/01/96
	.0801		✓		✓			08/01/96
	.0901		✓		✓			08/01/96
	.0902		✓					08/01/96
37A	.0100					✓		
46	.1204		✓					07/01/96
	.1505		✓					07/01/96
	.1601		✓		✓			07/01/96
	.1602		✓					07/01/96
	.1811	✓			✓			07/01/96
	.1910			✓				07/01/96
	.2104		✓					07/01/96
	.2403		✓		✓			07/01/96
	.2502		✓		✓			07/01/96
	.2504		✓		✓			07/01/96
54	.1605		✓		✓			07/01/96
	.1705		✓		✓			07/01/96

**LIST OF RULES CODIFIED**

RULE CITATION		AD	AM	RP	WITH CHGS	CORR	TEMP	EFFECTIVE DATE
	.2202 - .2203		✓		✓			07/01/96
	.2704		✓					08/01/96
	.2706		✓					08/01/96
	58A .0107		✓					07/01/96
21	NCAC 58A .0302		✓					07/01/96
	.0401		✓		✓			07/01/96
	.0402		✓					07/01/96
	.0502		✓		✓			07/01/96
	.0503 - .0504		✓					07/01/96
	.0505		✓		✓			07/01/96
	.0506		✓					07/01/96
	.0510	✓						07/01/96
	.1702		✓		✓			07/01/96
	58C .0104		✓					07/01/96
	.0305		✓		✓			07/01/96
	.0306 - .0307		✓					07/01/96
	.0311 - .0312	✓						07/01/96
	58E .0203 - .0204		✓					07/01/96
	.0304		✓					07/01/96
	.0310	✓						07/01/96
	.0406 - .0407		✓					07/01/96
	.0411		✓					07/01/96
	.0503		✓					07/01/96
	.0511		✓					07/01/96
68	.0101	✓			✓			08/01/96
	.0102	✓						08/01/96
	.0201	✓						08/01/96
	.0202 - .0206	✓			✓			08/01/96
	.0207	✓						08/01/96
	.0208 - .0213	✓			✓			08/01/96
	.0401 - .0403	✓			✓			08/01/96
	.0404	✓						08/01/96

**LIST OF RULES CODIFIED**

RULE CITATION	AD	AM	RP	WITH CHGS	CORR	TEMP	EFFECTIVE DATE
.0405 - .0407	✓			✓			08/01/96
.0701 - .0703	✓			✓			08/01/96
.0704 - .0705	✓						08/01/96
.0706 - .0707	✓			✓			08/01/96
.0708	✓						08/01/96
21 NCAC 68 .0709	✓			✓			08/01/96
25 NCAC 1J .0613			✓		✓		08/01/96

**T**his Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, July 18, 1996 at 10:00 a.m. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Monday, July 15, 1996, at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

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**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**  
Vernice B. Howard  
Teresa L. Smallwood  
Charles H. Henry  
Philip O. Redwine - Vice Chairman

**Appointed by House**  
Jennie J. Hayman - Chairman  
Bill Graham  
Paul Powell  
Ed Shelton

**RULES REVIEW COMMISSION MEETING DATES**

July 18, 1996  
August 15, 1996  
September 19, 1996

October 17, 1996  
November 21, 1996  
December 19, 1996

**MEETING DATE: JULY 18, 1996**

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**LOG OF FILINGS**

**RULES SUBMITTED: MAY 20, 1996 THROUGH JUNE 20, 1996**

AGENCY/DIVISION	RULE NAME	RULE	ACTION
<b>DEPARTMENT OF COMMERCE</b>			
	Institutional Conservation Program	4 NCAC 12C .0007	Repeal
<b>DHR/SOCIAL SERVICES COMMISSION</b>			
	Services to Foster Parents	10 NCAC 41F .0705	Amend
	Criminal Convictions	10 NCAC 41F .0706	Repeal
	Criminal Histories	10 NCAC 41F .0707	Adopt
	Criminal Background Checks	10 NCAC 41F .0812	Repeal
	Criminal History Checks	10 NCAC 41F .0813	Adopt
	Training Requirements	10 NCAC 41F .0814	Adopt
	Acceptance of Reports	10 NCAC 42V .0201	Amend
	Identity of Complainant	10 NCAC 42V .0802	Amend
	Specific Findings	10 NCAC 42V .0803	Amend
<b>DEPARTMENT OF INSURANCE</b>			
	Definitions	11 NCAC 20 .0101	Adopt
	Written Contracts	11 NCAC 20 .0201	Adopt
	Contract Provisions	11 NCAC 20 .0202	Adopt
	Changes Requiring Approval	11 NCAC 20 .0203	Adopt
	Carrier Contracts	11 NCAC 20 .0204	Adopt
	Filing Requirements	11 NCAC 20 .0205	Adopt
	Provider Availability	11 NCAC 20 .0301	Adopt
	Provider Accessibility	11 NCAC 20 .0302	Adopt
	Provider Network	11 NCAC 20 .0303	Adopt
	Monitoring Activities	11 NCAC 20 .0304	Adopt
	Credential Verification	11 NCAC 20 .0401	Adopt

Organization Structure	11 NCAC 20 .0402	Adopt
Written Credential Verification	11 NCAC 20 .0403	Adopt
Application	11 NCAC 20 .0404	Adopt
Verification of Credentials	11 NCAC 20 .0405	Adopt
Provider Files	11 NCAC 20 .0406	Adopt
Reverification	11 NCAC 20 .0407	Adopt
Confidentiality	11 NCAC 20 .0408	Adopt
Records and Exam	11 NCAC 20 .0409	Adopt
Delegation	11 NCAC 20 .0410	Adopt
Program	11 NCAC 20 .0501	Adopt
Structure	11 NCAC 20 .0502	Adopt
Plan	11 NCAC 20 .0503	Adopt
Activities	11 NCAC 20 .0504	Adopt
Quality of Care	11 NCAC 20 .0505	Adopt
Delegation of Activities	11 NCAC 20 .0506	Adopt
Corrective Action	11 NCAC 20 .0507	Adopt
Conflicts of Interest	11 NCAC 20 .0508	Adopt
Confidentiality	11 NCAC 20 .0509	Adopt
Records and Exams	11 NCAC 20 .0510	Adopt
Internal Audit	11 NCAC 20 .0511	Adopt
Application	11 NCAC 20 .0601	Adopt
Written Notice	11 NCAC 20 .0602	Adopt
Accessibility	11 NCAC 20 .0701	Adopt

**DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

Statement of Purpose	15A NCAC 1C .0101	Amend
Exceptions	15A NCAC 1C .0503	Amend
Non-Major Activities	15A NCAC 1C .0504	Amend

**DEHNR/ENVIRONMENTAL MANAGEMENT COMMISSION**

General Procedures	15A NCAC 2B .0101	Amend
Analytical Procedures	15A NCAC 2B .0103	Amend
Waters Affected by Dredge	15A NCAC 2B .0109	Repeal
Antidegradation Policy	15A NCAC 2B .0201	Amend
Definitions	15A NCAC 2B .0202	Amend
Wetland Standards	15A NCAC 2B .0231	Adopt
Purpose	15A NCAC 2H .0501	Adopt
Application	15A NCAC 2H .0502	Amend
Public Notice	15A NCAC 2H .0503	Amend
Hearing	15A NCAC 2H .0504	Amend
Review of Applications	15A NCAC 2H .0506	Adopt
Issuance of Certification	15A NCAC 2H .0507	Amend

**DEHNR/WILDLIFE RESOURCES COMMISSION**

Application	15A NCAC 10F .0102	Amend
Transfer of Ownership	15A NCAC 10F .0103	Amend
Certificate of Number	15A NCAC 10F .0104	Amend
Numbering Pattern	15A NCAC 10F .0105	Amend
Display of Vessel Numbers	15A NCAC 10F .0106	Amend
Validation Decal	15A NCAC 10F .0107	Amend
Temporary Certificate	15A NCAC 10F .0109	Adopt
Brunswick County	15A NCAC 10F .0305	Amend
Dare County	15A NCAC 10F .0310	Amend
Catawba County	15A NCAC 10F .0342	Amend
Person County	15A NCAC 10F .0348	Amend

**DEHNR/COMMISSION FOR HEALTH SERVICES**

Definitions	15A NCAC 18A .3101	Amend
Reports of Elevated Blood	15A NCAC 18A .3102	Amend
Examination	15A NCAC 18A .3103	Amend
Investigation	15A NCAC 18A .3104	Amend
Notification	15A NCAC 18A .3105	Amend
Abatement	15A NCAC 18A .3106	Amend

**NC STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS**

Initial Licensure Fee	21 NCAC 37D .0202	Amend
Renewal Fee	21 NCAC 37G .0102	Amend
Continuing Education	21 NCAC 37H .0102	Amend

**RULES REVIEW OBJECTIONS****ENVIRONMENT, HEALTH, AND NATURAL RESOURCES****Environmental Management**

15A NCAC 2B .0216 - Fresh Surface Water Quality Standards for Ws-iv Waters	RRC Objection	05/16/96
Agency Revised Rule	Obj. Removed	05/16/96
15A NCAC 2D .0501 - Compliance with Emission Control Standards	RRC Objection	06/20/96
Agency Revised Rule	Obj. Removed	06/20/96
15A NCAC 2D .0608 - Program Schedule	RRC Objection	06/20/96
Agency Revised Rule	Obj. Removed	06/20/96
15A NCAC 2D .0901 - Definitions	RRC Objection	06/20/96
Agency Revised Rule	Obj. Removed	06/20/96
15A NCAC 2D .0926 - Bulk Gasoline Plants	RRC Objection	06/20/96
Agency Revised Rule	Obj. Removed	06/20/96
15A NCAC 2D .0934 - Coating of Miscellaneous Metal Parts and Products	RRC Objection	06/20/96
Agency Revised Rule	Obj. Removed	06/20/96
15A NCAC 2D .1109 - Case-by-Case Maximum Achievable Control Technology	RRC Objection	06/20/96
Agency Revised Rule	Obj. Removed	06/20/96
15A NCAC 2H .0219 - Minimum Design Requirements	RRC Objection	04/18/96
Rule Returned to Agency	Obj. Cont'd	05/16/96
Agency Filed Rule for Codification Over RRC Objection	Eff. 06/01/96	

**Commission for Health Services**

15A NCAC 13B .1406 - Operational Requirements for Solid Waste Compost Facilities	RRC Objection	04/18/96
Agency Revised Rule	Obj. Cont'd	04/18/96
Rule Returned to Agency	Obj. Cont'd	05/16/96
Agency Filed Rule for Codification Over RRC Objection	Eff. 06/01/96	
15A NCAC 13B .1407 - Classification/Distribution of Solid Waste Compost Products	RRC Objection	04/18/96
Agency Revised Rule	Obj. Cont'd	04/18/96
Rule Returned to Agency	Obj. Cont'd	05/16/96
Agency Filed Rule for Codification Over RRC Objection	Eff. 06/01/96	
15A NCAC 13B .1408 - Methods for Testing and Reporting Requirements	RRC Objection	04/18/96
Agency Revised Rule	Obj. Cont'd	04/18/96
Rule Returned to Agency	Obj. Cont'd	05/16/96
Agency Filed Rule for Codification Over RRC Objection	Eff. 06/01/96	
15A NCAC 13B .1409 - Approval of Alternative Procedures and Requirements	RRC Objection	04/18/96
Rule Returned to Agency	Obj. Cont'd	05/16/96
Agency Filed Rule for Codification Over RRC Objection	Eff. 06/01/96	

**Wildlife Resources Commission**

15A NCAC 10D .0003 - Hunting on Game Lands	RRC Objection	05/16/96
Agency Revised Rule	Obj. Removed	05/16/96

**HUMAN RESOURCES**

**Commission for Mental Health, Developmental Disabilities and Substance Abuse Services**

<i>10 NCAC 15A .0126 - Resolution of Differences of Opinion</i>	<i>RRRC Objection</i>	<i>05/16/96</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/16/96</i>

**JUSTICE**

**Private Protective Services**

<i>12 NCAC 7D .0808 - Concealed Weapons</i>	<i>RRRC Objection</i>	<i>03/21/96</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>04/18/96</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/16/96</i>

**MEDICAL BOARD**

<i>21 NCAC 32H .0702 - Requests</i>	<i>RRRC Objection</i>	<i>04/18/96</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>05/16/96</i>
<i>Rule Returned to Agency for Failure to Respond Pursuant to G.S. 150B-21.12</i>	<i>Obj. Cont'd</i>	<i>06/20/96</i>

**BOARD OF PHARMACY**

<i>21 NCAC 46 .1601 - Pharmacy Permits</i>	<i>RRRC Objection</i>	<i>06/20/96</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/20/96</i>
<i>21 NCAC 46 .1607 - Out-of-State Pharmacies</i>		<i>06/20/96</i>
<i>Rule Withdrawn by Agency</i>		
<i>21 NCAC 46 .1811 - Excessive Dispensing of Prescription Drugs</i>	<i>RRRC Objection</i>	<i>06/20/96</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/20/96</i>
<i>21 NCAC 46 .2502 - Responsibilities of Pharmacist-Manager</i>	<i>RRRC Objection</i>	<i>06/20/96</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/20/96</i>
<i>21 NCAC 46 .2504 - Patient Counseling</i>	<i>RRRC Objection</i>	<i>06/20/96</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/20/96</i>

**PUBLIC EDUCATION**

**State Board of Education**

<i>16 NCAC 1A .0003 - Organization of Department</i>	<i>RRRC Objection</i>	<i>05/16/96</i>
<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>05/16/96</i>
<i>16 NCAC 6D .0106 - Limited English Proficiency Programs</i>	<i>RRRC Objection</i>	<i>03/21/96</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>04/18/96</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/16/96</i>
<i>16 NCAC 6H .0007 - Special Education Assessment and Placement Procedures</i>	<i>RRRC Objection</i>	<i>05/16/96</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/16/96</i>

**REAL ESTATE COMMISSION**

<i>21 NCAC 58A .0104 - Agency Agreements and Disclosure</i>	<i>RRRC Objection</i>	<i>06/20/96</i>
<i>21 NCAC 58A .0113 - Reporting Criminal Convictions</i>	<i>RRRC Objection</i>	<i>06/20/96</i>
<i>21 NCAC 58A .0502 - Business Entities</i>	<i>RRRC Objection</i>	<i>06/20/96</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/20/96</i>
<i>21 NCAC 58A .0610 - Subpoenas</i>	<i>RRRC Objection</i>	<i>06/20/96</i>
<i>21 NCAC 58E .0302 - Elective Course Component</i>	<i>RRRC Objection</i>	<i>06/20/96</i>

**T**his Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

**OFFICE OF ADMINISTRATIVE HEARINGS**

*Chief Administrative Law Judge*  
JULIAN MANN, III

*Senior Administrative Law Judge*  
FRED G. MORRISON JR.

**ADMINISTRATIVE LAW JUDGES**

Brenda B. Becton  
Sammie Chess Jr.  
Beecher R. Gray  
Meg Scott Phipps

Robert Roosevelt Reilly Jr.  
Dolores Nesnow Smith  
Thomas R. West

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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**ALCOHOLIC BEVERAGE CONTROL COMMISSION**

Fuad Saif Murshed v. Alc. Bev. Ctl. Comm. & Durham Mem. Bapt. Ch.	95 ABC 0922	Chess	04/24/96	
Alcoholic Beverage Control Commission v. Tremik, Inc.	95 ABC 0925	Morrison	03/25/96	
Alcoholic Beverage Control Commission v. Maria Virginia Tramontano	95 ABC 1200	West	04/23/96	
Alcoholic Beverage Control Commission v. Huffman Oil Co., Inc.	95 ABC 1251	West	04/03/96	11:03 NCR 166
Pinakin P. Talate v. Alcoholic Beverage Control Commission	95 ABC 1329	West	04/10/96	
Alcoholic Beverage Control Commission v. Entrepreneur, Inc.	95 ABC 1363	Reilly	05/02/96	
Alcoholic Beverage Control Commission v. Zell, Inc.	95 ABC 1366	West	06/17/96	
Alcoholic Beverage Control Commission v. Henry Franklin Gurganus	95 ABC 1389	West	04/01/96	
Andrew Parker v. Alcoholic Beverage Control Commission	95 ABC 1402	Phipps	03/27/96	
Barraq Sabri Alquza v. Alcoholic Beverage Control Commission	95 ABC 1424	Phipps	04/03/96	
Alcoholic Beverage Control Comm. v. Partnership T/A T & L Groceries	95 ABC 1443	West	03/26/96	
Alcoholic Beverage Control Commission v. Cashion's Food Mart, Inc.	95 ABC 1444	Gray	03/13/96	
Bro Bee, Inc. v. Alcoholic Beverage Control Commission	95 ABC 1480	West	04/15/96	
Alcoholic Beverage Control Commission v. Donald Ray Doak	95 ABC 1488	West	03/29/96	
Alcoholic Beverage Control Commission v. Janice Lorraine Jeter	96 ABC 0013	Reilly	04/26/96	
Alcoholic Beverage Control Commission v. Well Informed, Inc.	96 ABC 0016	Chess	05/28/96	
Alcoholic Beverage Control Commission v. Kuhard, Inc.	96 ABC 0017	Reilly	05/20/96	
Alcoholic Beverage Control Commission v. Stemmermann's, Inc.	96 ABC 0018	Chess	05/28/96	
George Wright and Alice Ramsuer v. Alcoholic Beverage Control Comm.	96 ABC 0058	Becton	04/16/96	
Alcoholic Beverage Control Commission v. Robert Montgomery McKnight	96 ABC 0135	Phipps	05/09/96	
Gerald Audry Sellars v. Alcoholic Beverage Control Commission	96 ABC 0160	Becton	06/25/96	11:08 NCR 564
Alcoholic Beverage Control Commission v. Jacqueline Robin Anthony	96 ABC 0184	Phipps	05/09/96	
Alcoholic Beverage Control Commission v. Millicent J. Green	96 ABC 0234	Nesnow Smith	06/13/96	
Ghassan Hasan Issa v. Alcoholic Beverage Control Commission	96 ABC 0256	Morrison	05/23/96	
Alcoholic Beverage Control Commission v. Triangle Drive-In	96 ABC 0443	Reilly	06/11/96	

**COMMISSION FOR AUCTIONEERS**

John W. Foster v. Auctioneer Licensing Board	96 CFA 0201	Phipps	05/06/96
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**CRIME CONTROL AND PUBLIC SAFETY**

Roland Lee Kelly, Jr. v. United Family Services, Victim Assistance/Crime Victims Compensation Comm.	95 CPS 0568	Morrison	05/29/96
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**CONTESTED CASE DECISIONS**

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Robert F. Bronson v. Crime Victims Compensation Commission	95 CPS 1216	Chess	05/28/96	
Helen B. Hunter-Reid v. Crime Victims Compensation Commission	95 CPS 1336	Nesnow Smith	03/29/96	11:02 NCR 93
Kenneth Saunders v. Victims Compensation Commission	95 CPS 1445	Chess	03/26/96	
Ruby H. Ford v. Crime Victims Compensation Commission	96 CPS 0110	Reilly	04/18/96	
Manuel Cervantes v. Victims Compensation Fund	96 CPS 0118	Chess	03/19/96	
Donna Williams v. Crime Victims Compensation Commission	96 CPS 0493	Morrison	06/13/96	
<b>ENVIRONMENT, HEALTH, AND NATURAL RESOURCES</b>				
Gribble & Assoc. & Four Seasons Car Wash v. EHNR	95 EHR 0576	Gray	04/25/96	
David Martin Shelton v. Rockingham County Dept/Public Health, EHNR	95 EHR 0941	West	05/01/96	
Kinston Urological Associates, P.A. v. N.C. Cancer Program	95 EHR 1198* <sup>2</sup>	Nesnow Smith	03/27/96	11:02 NCR 97
Kinston Urological Associates, P.A. v. N.C. Cancer Program	95 EHR 1199* <sup>2</sup>	Nesnow Smith	03/27/96	11:02 NCR 97
Elsie & Tony Cecchini v. Environment, Health, & Natural Resources	95 EHR 1240	Reilly	04/22/96	
Gerald Mac Clamrock v. Environment, Health, & Natural Resources	96 EHR 0168	Phipps	05/06/96	
<i>Coastal Resources</i>				
Martin W. Synger v. Division of Coastal Management	95 EHR 1006	Chess	05/13/96	
J. E. Smith Construction Co. v. Division of Coastal Management	96 EHR 0074	Nesnow Smith	02/23/96	
Theodore D. Barris v. Town of Long Beach, NC & Coastal Mgmt, EHNR	96 EHR 0277	West	05/09/96	
<i>Environmental Health</i>				
Forest Gate Motel v. Environment, Health, and Natural Resources	96 EHR 0076	West	06/17/96	
Paradise Ridge Home Owners by Anne Norburn v. EHNR, Env. Health	96 EHR 0162	Phipps	05/06/96	
<i>Environmental Management</i>				
Herman E. Smith v. Division of Environmental Management	95 EHR 0962	West	04/30/96	
Conover Lumber Co., Inc. v. EHNR, Division of Environmental Mgmt.	95 EHR 1081	Reilly	04/12/96	
Jack West d/b/a Jack West Tree Service v. Environmental Mgmt. Comm.	95 EHR 1421	Morrison	04/08/96	
Clover M Farms, Inc. v. EHNR, Division of Environmental Management	96 EHR 0405	Becton	06/10/96	
<i>Land Resources</i>				
K&G Properties, Inc. v. EHNR, Division of Land Resources	95 EHR 1078	Nesnow Smith	03/25/96	
<i>Marine Fisheries</i>				
Robert I. Swinson, Sr. v. EHNR, Health & Nat. Res., Marine Fisheries	95 EHR 0320	Chess	03/29/96	11:03 NCR 168
Grayden L. Fulcher and Michael Styron, Sr. v. Div. of Marine Fisheries	96 EHR 0003	Reilly	03/06/96	
<i>Solid Waste Management</i>				
R. Donald Phillips v. EHNR, Solid Waste Management Division	95 EHR 1190* <sup>4</sup>	Gray	05/22/96	
R. Donald Phillips v. EHNR, Solid Waste Management Division	96 EHR 0554* <sup>4</sup>	Gray	05/22/96	
<i>WIC Program</i>				
Lazelle Marks v. EHNR, Division of Maternal and Child Health	95 EHR 0870	West	03/27/96	
Hani Sader v. Nutrition Services, Div/Maternal & Child Health, EHNR	96 EHR 0054	West	05/22/96	
Bob's Quick Mart, Bobby D. Braswell v. Env., Health, & Natural Res.	96 EHR 0091	Nesnow Smith	04/02/96	
Larry E. Mis v. USDA-Food/Cons Svc, Cory Menees-WIC Prog., EHNR	96 EHR 0164	Phipps	03/19/96	
<b>EQUAL EMPLOYMENT OPPORTUNITIES</b>				
Carl D. Davis v. Department of Correction	91 EEO 1101	Nesnow Smith	05/06/96	
<b>HUMAN RESOURCES</b>				
Cassandra M. Deshazo v. Christine E. Carroll, Chf Chld Abuse/Neg. Sec.	95 DHR 1410	Phipps	03/28/96	
Medicus Robinson v. Department of Human Resources	96 DHR 0167	Nesnow Smith	04/12/96	
<i>Division of Child Development</i>				
Molly Fallin v. Department of Human Resources	94 DHR 0872* <sup>3</sup>	Gray	05/15/96	
Molly Fallin v. Department of Human Resources	95 DHR 1013* <sup>3</sup>	Gray	05/15/96	

**CONTESTED CASE DECISIONS**

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Mary T. Hill v. DHR, Division of Child Development Iola Roberson v. DHR, Division of Child Development	95 DHR 1192 95 DHR 1244	Phipps Gray	03/27/96 05/16/96	
<i>Division of Facility Services</i>				
Eloise Brown v. Dept. of Human Resources, Division of Facility Services	95 DHR 1002	Phipps	03/07/96	
<i>Certificate of Need Section</i>				
Nash Hospitals, Inc. v. DHR, Div/Facility Services, Cert. of Need Sect. Pitt Cty Mem. Hospital, Inc. v. DHR, Div/Facility Sries, Cert/Need Sect.	95 DHR 1176* 95 DHR 1177*	Phipps Phipps	05/23/96 05/23/96	11:06 NCR 389 11:06 NCR 389
<i>Group Care Licensure Section</i>				
Alex L. McCall v. DHR, Div/Facility Svcs, Group Care Licensure Sec.	95 DHR 1456	Nesnow Smith	03/26/96	
<i>Medical Facilities Licensure Section</i>				
Deborah Reddick v. Department of Human Resources Stacey Yvette Franklin v. Facility Services, Medical Facilities Lic. Sec.	96 DHR 0240 96 DHR 0358	Reilly Morrison	06/18/96 05/16/96	
<i>Division of Medical Assistance</i>				
Judy Malcuit, Re Melissa Malcuit v. DHR, Div. of Medical Assistance	96 DHR 0129	Gray	06/12/96	
<i>Division of Social Services</i>				
Rozena Chambliss v. Department of Human Resources Addic & Major Short v. Department of Human Resources Mr. and Mrs. Jessie Stevenson v. DHR, Division of Social Services William G. Fisher v. DHR, Div. of Social Services, Prog Integrity Branch Verna F. Nunn v. Department of Human Resources Nancy Hooker, Helen Tyndall v. Department of Human Resources	95 DHR 1044 95 DHR 1063 95 DHR 1072 95 DHR 1234 95 DHR 1330 96 DHR 0155	Nesnow Smith Morrison Phipps Morrison Gray Gray	03/12/96 03/19/96 03/15/96 03/19/96 04/11/96 04/26/96	
<i>Child Support Enforcement Section</i>				
Donald E. Rideout Jr. v. Department of Human Resources Christopher F. Roakes v. Department of Human Resources Claude Eure Jr. v. Department of Human Resources Richard R. Fox, Sr. v. Department of Human Resources Joselito D. Pilar v. Department of Human Resources David Lee Grady v. Department of Human Resources Patrick Orlando Crump v. Department of Human Resources Peter Robert Kovolsky v. Department of Human Resources Tony Lee Zapata v. Department of Human Resources Lawrence Dow Dean v. Department of Human Resources Carl E. Coffey v. Department of Human Resources Keith Dewayne Senters v. Department of Human Resources Lonnie Dawes v. Department of Human Resources Mickey Turner v. Department of Human Resources James Joseph Gallagher v. Department of Human Resources James Thomas McRae v. Department of Human Resources Vincent E. Koehler v. Department of Human Resources David J. Moseley v. Department of Human Resources Derrick L. Conyers v. Department of Human Resources Charles Edward Smith v. Department of Human Resources Kevin Vereen v. Department of Human Resources James Curtis Witwer v. Department of Human Resources Thornell Bowden v. Department of Human Resources Henry S. Sada v. Department of Human Resources Charles F. Moore v. Department of Human Resources Daniel Leslie Baker v. Department of Human Resources Kenneth L. Lindsey v. Department of Human Resources John L. Pike v. Department of Human Resources Wm. R. Evans v. Department of Human Resources Rory J. Curry v. Department of Human Resources Lorin A. Brown v. Department of Human Resources Marcus Anthony Butts v. Department of Human Resources	95 CSE 0952 95 CSE 1131 95 CSE 1155 95 CSE 1169 95 CSE 1180 95 CSE 1218 95 CSE 1221 95 CSE 1230 95 CSE 1266 95 CSE 1267 95 CSE 1270 95 CSE 1273 95 CSE 1274 95 CSE 1278 95 CSE 1280 95 CSE 1296 95 CSE 1301 95 CSE 1304 95 CSE 1308 95 CSE 1309 95 CSE 1315 95 CSE 1331 95 CSE 1345 95 CSE 1367 95 CSE 1369 95 CSE 1373 95 CSE 1375 95 CSE 1376 95 CSE 1377 95 CSE 1380 95 CSE 1382 95 CSE 1405	Reilly Becton Phipps Becton Chess Morrison Nesnow Smith Becton Gray Morrison Nesnow Smith Phipps Nesnow Smith Nesnow Smith Nesnow Smith Chess Chess Phipps Becton Chess Reilly West Phipps Becton Morrison Nesnow Smith Chess West Becton West Nesnow Smith West Morrison Nesnow Smith West Nesnow Smith Nesnow Smith Mann Reilly Nesnow Smith	04/18/96 05/03/96 06/12/96 03/19/96 03/01/96 03/26/96 03/05/96 03/11/96 05/02/96 03/29/96 03/15/96 04/01/96 06/12/96 03/14/96 03/19/96 03/15/96 05/09/96 03/29/96 03/13/96 03/07/96 05/06/96 03/26/96 03/07/96 03/21/96 03/27/96 03/12/96 06/24/96 03/21/96 03/11/96 03/15/96 04/18/96 03/27/96	

**CONTESTED CASE DECISIONS**

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Cynthia Pinder v. Department of Human Resources	95 CSE 1406	Becton	03/11/96	
Rhonne J. Williams v. Department of Human Resources	95 CSE 1407	Chess	05/06/96	
Ramon Domenech v. Department of Human Resources	95 CSE 1408	Phipps	03/11/96	
Dennis L. McNeill v. Department of Human Resources	95 CSE 1435	Becton	03/13/96	
Tony A. Rogers v. Department of Human Resources	95 CSE 1436	Chess	05/16/96	
Rick E. Atkins v. Department of Human Resources	95 CSE 1437	Phipps	04/01/96	
Timothy A. Ratley (Jeanes) v. Department of Human Resources	95 CSE 1465	Morrison	03/26/96	
Richard E. Reader v. Department of Human Resources	95 CSE 1469	Nesnow Smith	04/29/96	
Wilbur Dewayne Bault v. Department of Human Resources	95 CSE 1475	West	03/13/96	
James C. Smith v. Department of Human Resources	96 CSE 0034	Gray	05/10/96	
Ronald D. Johnson v. Department of Human Resources	96 CSE 0084	Nesnow Smith	03/27/96	
Johnny Leary v. Department of Human Resources	96 CSE 0085	Becton	05/03/96	
John W. Scott v. Department of Human Resources	96 CSE 0130	Mann	03/15/96	
Calvin S. Austin v. Department of Human Resources	96 CSE 0140	Phipps	05/17/96	
Derek Henslee v. Department of Human Resources	96 CSE 0188	Reilly	05/17/96	
Donald L. Carr, Jr. v. Department of Human Resources	96 CSE 0200	West	05/30/96	
Norman Waycaster v. Department of Human Resources	96 CSE 0245	Becton	05/16/96	
Lorenzo Wilson v. Department of Human Resources	96 CSE 0257	Phipps	05/06/96	
Mark Kevin Burns v. Department of Human Resources	96 CSE 0271	Morrison	06/24/96	
Cyril Lloyd Payne v. Department of Human Resources	96 CSE 0272	Reilly	05/31/96	
Christopher F. Byrne v. Department of Human Resources	96 CSE 0336	Chess	06/26/96	
Richard Painall Burch v. Department of Human Resources	96 CSE 0339	Phipps	06/27/96	
Thornell Bowden v. Department of Human Resources	96 CSE 0370	Morrison	05/17/96	
Carl R. Ritter v. Department of Human Resources	96 CSE 0380	West	05/08/96	
Gerald Roger Beachum Jr. v. Department of Human Resources	96 CSE 0411	Phipps	06/24/96	
Daniel J. Carter v. Department of Human Resources	96 CSE 0417	Gray	06/24/96	
Kelvin Tarlton v. Department of Human Resources	96 CSE 0424	Morrison	05/29/96	
John L. Cherry Jr. v. Department of Human Resources	96 CSE 0426	West	06/24/96	
Terry Sealey v. Department of Human Resources	96 CSE 0430	Phipps	05/29/96	
Jackie L. Kopczick v. Department of Human Resources	96 CSE 0431	Mann	06/05/96	
Alan Kendell Locklear v. Department of Human Resources	96 CSE 0503	West	05/30/96	
Hazel L. Walker v. Department of Human Resources	96 CSE 0559	West	06/24/96	
Carl S. McNair v. Department of Human Resources	96 CSE 0568	Becton	06/24/96	
David Agurs v. Department of Human Resources	96 CSE 0580	Chess	06/13/96	
Melinda S. Tunner v. Department of Human Resources	95 DCS 0921	Morrison	05/09/96	
Jeanne G. Bishop v. Department of Human Resources	95 DCS 0958	West	04/04/96	
Rebecca Beaver v. Department of Human Resources	95 DCS 1114	Reilly	04/26/96	
Vivian B. White v. Department of Human Resources	95 DCS 1115	Phipps	06/04/96	
Mary R. Mahon v. Department of Human Resources	95 DCS 1137*	Chess	06/11/96	
Mary R. Mahon v. Department of Human Resources	95 DCS 1142*	Chess	06/11/96	
Laura Heidorf v. Department of Human Resources	96 DCS 0065	Reilly	03/22/96	

**INSURANCE**

Carol M. Hall v. Teachers & State Employees Comp. Major Medical Plan	95 INS 1141	Phipps	04/01/96	
Arthur Wayne Dempsey v. Department of Insurance	95 INS 1255	Nesnow Smith	04/22/96	
Deborah B. Beavers v. Teachers & St. Emp. Comp. Major Med. Plan	95 INS 1411	Nesnow Smith	05/10/96	11:05 NCR 308
Nadia A. Hakim v. Department of Insurance	95 INS 1422	Nesnow Smith	03/26/96	

**JUSTICE**

*Education and Training Standards Division*

Freddie Levern Thompson v. Criml. Justice Ed. & Training Stds. Comm.	95 DOJ 0731	Chess	02/29/96
Shane Douglas Crawford v. Sheriffs' Ed. & Training Stds. Comm.	95 DOJ 0943	Reilly	05/17/96
Charles Henry Daniels v. Criml. Justice Ed. & Training Stds. Comm.	95 DOJ 1070	West	06/12/96
Valerie Maxine Brewington v. Criml. Justice Ed. & Training Stds. Comm.	95 DOJ 1129	Nesnow Smith	04/12/96
Patricia Josephine Bonanno v. Sheriffs' Ed. & Training Stds. Comm.	95 DOJ 1152	Chess	03/25/96
Douglas Allan Stuart v. Sheriffs' Ed. & Training Stds. Comm.	95 DOJ 1189	Morrison	06/06/96
Rick M. Evoy v. Criminal Justice Ed. & Training Stds. Comm.	95 DOJ 1235	Chess	03/25/96
Gregory Lee Daughtridge v. Sheriffs' Ed. & Training Stds. Comm.	96 DOJ 0027	Reilly	03/19/96
Stuart Hugh Rogers v. Sheriffs' Ed. & Training Stds. Comm.	96 DOJ 0029	West	06/18/96
Larry D. Weston v. Sheriffs' Ed. & Training Stds. Comm.	96 DOJ 0037	Nesnow Smith	06/12/96
Carlton Gerald v. Criminal Justice Ed. & Training Stds. Comm.	96 DOJ 0068	Gray	03/26/96
Ken Montie Oxendine v. Criminal Justice Ed. & Training Stds. Comm.	96 DOJ 0071	West	03/28/96
David Kent Knight v. Sheriffs' Ed. & Training Stds. Comm.	96 DOJ 0115	West	03/28/96

*Private Protective Services Board*

**CONTESTED CASE DECISIONS**

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Timothy A. Hawkins v. Private Protective Services Board	95 DOJ 1419	West	04/12/96	
William F. Combs v. Private Protective Services Board	96 DOJ 0022	West	03/22/96	
Randy C. Hoyle v. Private Protective Services Board	96 DOJ 0024	Nesnow Smith	06/10/96	
<b>MEDICAL BOARD</b>				
Medical Board v. Martin A. Hatcher, M.D.	92 BME 0510	Gray	06/28/96	11:08 NCR 555
<b>PUBLIC INSTRUCTION</b>				
Lavern K. Suggs v. NC Board of Education	95 EDC 0383	Nesnow Smith	03/13/96	11:01 NCR 50
J.T.S. & T.S., Parents of E.M.S. v. Chapel Hill-Carrboro City Schl. Sys.	95 EDC 1194	Mann	04/12/96	
L.O. v. Charlotte-Mecklenburg Board of Education	96 EDC 0285	Mann	05/31/96	
Candyce Ewanda Newsome v. Hertford County Board of Education	96 EDC 0344	Chess	05/15/96	
<b>STATE PERSONNEL</b>				
<i>Department of Administration</i>				
Jonathan L. Fann v. Department of Administration, Admin. Personnel	96 OSP 0042	Gray	05/24/96	
Carlton Gerald v. State Capitol Police, Department of Administration	96 OSP 0116	Gray	04/25/96	
<i>Administrative Office of the Court</i>				
Ethel R. Tyson v. NC Judicial Dept., Administrative Office of the Court	96 OSP 0080	Nesnow Smith	03/15/96	
<i>Appalachian State University</i>				
Janice S. Walton v. Appalachian St University, Claude Cooper, Bill Ragan	96 OSP 0062	West	03/13/96	
Janice S. Carroll v. Appalachian St University, Claude Cooper, Bill Ragan	96 OSP 0063	West	03/07/96	
<i>Caldwell County</i>				
Blake C. Pace v. Caldwell County	96 OSP 0047	Morrison	04/01/96	
<i>NC Central University</i>				
Francina Y. Tate v. Chancellor Julius L. Chambers, NC Central Univ.	95 OSP 1432	Nesnow Smith	04/22/96	
<i>Central North Carolina School for the Deaf</i>				
Felicia S. Milton v. Central North Carolina School for the Deaf	95 OSP 1241	Chess	05/17/96	
<i>Cherry Hospital</i>				
Mary A. Boogaerts v. Cherry Hospital, Goldsboro, NC	96 OSP 0269	Becton	05/29/96	
<i>Department of Correction</i>				
Haydee Craver v. Department of Correction, Pender Correctional Inst.	95 OSP 1046	Gray	03/12/96	
Gregory Allen Jones v. Department of Correction, Supt. Bonnie Boyette	95 OSP 1290	Phipps	05/14/96	
Calvia L. Hill v. Department of Correction, McCain Correctional Hospital	95 OSP 1460	Gray	05/17/96	
Alisha Louise Staley v. Randolph Correctional Center	96 OSP 0092	Gray	06/03/96	
Brenda Propst v. Foothills Correctional Institution	96 OSP 0199	Morrison	04/09/96	
Haydee C. Craver v. Department of Correction, Christopher Phillips	96 OSP 0348	Phipps	05/15/96	
<i>East Carolina University</i>				
Bela E. Karvaly, Ph.D. v. ECU Bd. of Trustees, Ch. Richard R. Eakin	96 OSP 0150	Chess	05/08/96	
<i>Employment Security Commission</i>				
Gene S. Baker v. Gov. James B. Hunt, Jr., Ann Q. Duncan, Chairman, Employment Security Commission	93 OSP 0707	Becton	05/16/96	11:05 NCR 300
William Herbert Allen v. Employment Security Commission	94 OSP 1688	West	06/11/96	
Patricia Gary v. Employment Security Commission	95 OSP 0793	Chess	05/14/96	
Tonderlier Lynch v. Emp. Security Comm., Austin Quality Foods, Inc.	96 OSP 0275	Chess	05/21/96	

**CONTESTED CASE DECISIONS**

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Department of Environment, Health, and Natural Resources</i>				
Roberta Ann "Robin" Hood v. Environment, Health, & Natural Resources	95 OSP 0035	Reilly	04/09/96	
<i>Fayetteville State University</i>				
William C. Neal v. Fayetteville State University	95 OSP 0392	Nesnow Smith	04/22/96	
<i>Department of Human Resources</i>				
Ophelia Webb v. Edard R. Inman, Dir. Alamance Cty DSS, Alamance Cty DSS, Alamance County, and DHR	96 OSP 0112	Gray	03/13/96	
Gail Marie Rodgers Lincoln v. DHR, DMH/DD/SAS-Cherry Hosp., Cherry Hospital	96 OSP 0159	Chess	06/17/96	
<i>Caswell Center</i>				
Ramona C. Jenkins v. Department of Human Resources, Caswell Center	89 OSP 0411	Becton	03/26/96	
Ramona C. Jenkins v. Department of Human Resources, Caswell Center	91 OSP 0522	Becton	03/26/96	11:02 NCR 89
Franklin D. Sutton v. Department of Human Resources, Caswell Center	94 OSP 0766	Nesnow Smith	03/21/96	
<i>Durham County Department of Social Services</i>				
Jan E. Smith v. Durham County Department of Social Services	95 OSP 1121	Morrison	05/24/96	
<i>Halifax County Department of Social Services</i>				
Clairbel Thomas v. Halifax County DSS & Director, Halifax County DSS	95 OSP 0905	West	05/29/96	11:06 NCR 395
<i>Division of Medical Assistance</i>				
Harold Wiggins v. Division of Medical Assistance	95 OSP 1482	West	06/11/96	
<i>O'Berry Center</i>				
Samuel Geddie v. O'Berry Center	96 OSP 0414	Morrison	06/13/96	
<i>Rockingham County Department of Social Services</i>				
Lorretta Lawson v. Rockingham County DSS	96 OSP 0471	West	06/13/96	
<i>Wake County Department of Social Services</i>				
Phylis Gilbert v. Wake County Department of Social Services	95 OSP 1238	Phipps	06/27/96	
<i>Department of Insurance</i>				
Larry W. Creech v. Department of Insurance	95 OSP 0631	Reilly	06/06/96	11:07 NCR 434
<i>Department of Labor</i>				
Kevin P. Kolbe, Sr. v. Department of Labor	95 OSP 0968	Morrison	03/14/96	11:01 NCR 58
<i>New Hanover County Board of Health</i>				
Tabandeh Zand v. New Hanover County Board of Health	95 OSP 1035	Nesnow Smith	03/01/96	
<i>North Carolina State University</i>				
Vernell Mitchell v. North Carolina Cooperative Extension	96 OSP 0132	Gray	05/10/96	
<i>Department of Transportation</i>				
Pearlie M. Simucl-Johnson v. Department of Transportation	94 OSP 0589 <sup>1</sup>	Gray	03/01/96	

\* Consolidated cases.

**CONTESTED CASE DECISIONS**

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Dorothy J. Grays v. Div. of Motor Vehicles, Dept. of Transportation	94 OSP 1044	Reilly	04/12/96	11:03 NCR 173
Pearlie M. Samuel-Johnson v. Department of Transportation	95 OSP 0837* <sup>1</sup>	Gray	03/01/96	
Melvin Duncan v. Department of Transportation	95 OSP 1462	Morrison	03/08/96	
Greg Brown v. Department of Transportation	96 OSP 0048	Reilly	05/02/96	
Jesse Wayne Castle v. State Highway Maint., Guess Rd., Durham, NC	96 OSP 0087	Gray	04/15/96	
Archie Brooks v. W. F. Rosser, Department of Transportation	96 OSP 0239	Nesnow Smith	05/17/96	
<i>Tri-County Mental Health Complex</i>				
Deborah Heil v. Tri-County Mental Health Complex	95 OSP 1100	Nesnow Smith	03/22/96	
<i>University of North Carolina</i>				
Pamela B. Edwards v. University of North Carolina at Chapel Hill	95 OSP 0842	Chess	06/28/96	
Keith R. Cameron v. University of North Carolina at Chapel Hill	95 OSP 1060	Morrison	06/24/96	
Jerel H. Bonner v. School of Nursing UNC at Chapel Hill	96 OSP 0026	Gray	03/12/96	11:01 NCR 61
Bela E. Karvaly, Ph.D. v. UNC Bd. of Gov., Pres. C.D. Spangler, Jr.	96 OSP 0151	Chess	05/08/96	
Carl E. Whigham v. UNC Hospitals at Chapel Hill	96 OSP 0248	Chess	06/11/96	
<b>UNIVERSITY OF NORTH CAROLINA</b>				
Sylvia Jeffries v. University of NC Hospitals at Chapel Hill	96 UNC 0067	Gray	04/16/96	

STATE OF NORTH CAROLINA

COUNTY OF WAKE

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IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
92 BME 0510

NORTH CAROLINA MEDICAL BOARD,  
Petitioner,  
v.  
MARTIN A. HATCHER, M.D.,  
Respondent.

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**PROPOSED DECISION**

This contested case was commenced in the Office of Administrative Hearings on May 4, 1992 when Petitioner, by letter, requested assignment of an Administrative Law Judge to conduct an administrative hearing in this matter. This case was continued off the active hearing docket at the request of the parties while pending or anticipated criminal proceedings were concluded.

A contested case hearing was conducted in this matter on March 19-20, 1996 in Guilford County. The hearing was closed to the public in accordance with G.S. 90-16 because the patients who testified or whose depositions were introduced into evidence have not consented to disclosure of their names. This record, insofar as patient names are disclosed, is SEALED until used by the North Carolina Medical Board in making its Final Decision or by possible future appeal tribunals.

On May 15 and 16, 1996, Petitioner and Respondent, respectively, filed proposed findings of fact and written arguments.

#### APPEARANCES

Petitioner: Michael E. Weddington, Esq.  
Mark A. Springfield, Esq.  
P.O. Box 2611  
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Respondent: John T. Williamson, Esq.  
Craig D. Mills, Esq.  
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#### ISSUES

1. Whether Respondent sexually exploited Loretta Gail Williams by engaging in sexual intercourse, or attempting to engage in sexual intercourse, with her during a medical examination on or about April 27, 1990 and thereby acted immorally, dishonorably, or unprofessionally in violation of G.S. 90-14(a)(1) and (6).

2. Whether Respondent sexually exploited patients A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P, and Q during the course of his medical examinations of those patients and thereby acted immorally, dishonorably, or unprofessionally in violation of G.S. 90-14(a)(1) and (6).

#### FINDINGS OF FACT

1. It is stipulated that all parties are properly before the Office of Administrative Hearings (OAH) and that the OAH has jurisdiction of the parties and of the subject matter.

2. It is stipulated that the Petitioner was at the time of filing of this action correctly designated as Board of

Medical Examiners of the State of North Carolina, and that the proper designation for the Petitioner has since been changed by amendment of N.C. Gen. Stat. §90-2 to North Carolina Medical Board and that the caption of this case should be changed accordingly. There is no question as to misjoinder or non-joinder of parties.

3. At all relevant times Respondent was, and continues to be, a physician duly licensed by the Petitioner for the practice of medicine in North Carolina and whose practice of medicine is subject to regulation by the Petitioner pursuant to Chapter 90, Article 1 of the North Carolina General Statutes.

4. Petitioner listed 18 complaining patients in its Notice of Charges and Allegations dated April 22, 1992. Petitioner produced no evidence regarding patient R during the contested case hearing.

5. Respondent Martin A. Hatcher resides in Greensboro, North Carolina where he is a practicing member of Wendover Park Medical Associates, P.A. Respondent graduated from Duke University Medical School in 1962. In 1970 he became Board certified in Neurology, a subspecialty of internal medicine. The practice of Neurology concerns conditions of the brain, spinal cord, and peripheral nerves which cause pain.

6. Respondent has practiced in Greensboro since 1968. He sees approximately 1,000 new patients each year, approximately two thirds of whom are females. He holds staff privileges at Moses Cone and Wesley Long Hospitals in Greensboro.

7. Respondent has no prior history of disciplinary actions before the North Carolina Medical Board or its predecessor, the North Carolina Board of Medical Examiners.

8. Respondent Hatcher, Dr. James Love, and Dr. James Adelman each testified that it was the standard of care of a practicing Neurologist in the Greensboro community in 1990 for new patients, both male and female, to be instructed to disrobe to paper gown and underpants for a medical examination if a general medical examination were conducted in conjunction with or prior to a neurologic examination. Each of these practicing neurologists carried out breast exams of new female patients without the presence of a chaperone during and before 1990. Respondent Hatcher did not use chaperones with female patients unless the patient was young or requested a chaperone. Petitioner Medical Board did not present any evidence that this was not an accepted standard of medical practice in neurology in 1990 in Greensboro.

9. Respondent, during and prior to 1990, conducted breast exams on his female patients because of the possibility of breast cancer. It has been Respondent Hatcher's experience that one of every ten to twelve females will have cancer of the breast. Many times cancer in the breast will metastasize to the head and may be caught by the lymphatic system, including lymph nodes under the arms. Respondent Hatcher's practice during and before 1990 was to look at the breast he is examining to detect discoloration; hanging symmetry; and discharge from the nipples. It has been his experience from his practice or other medical sources that 18 percent of breast cancer occurs under the nipples.

10. At the time of this contested case hearing, Respondent Hatcher had no independent recollection of the details of the examinations of the females who are complaining witnesses. Respondent denies ever having touched a female patient in any way with any part of his body for his own personal gratification.

11. Respondent saw Loretta Gail Williams, an obese 23 year old African-American female, on April 27, 1990 for medical examination in his office because of physical complaints that included low back pain. Loretta Gail Williams did not testify in this contested case hearing. Her deposition and medical records were admitted into evidence.

12. Patient A (Loretta Gail Williams) was about 30 minutes late for her appointment and appeared confused to receptionist Carol Cobb who then was employed by Respondent's medical practice. Patient Williams was in the examining room approximately 15-20 minutes. Her examination was interrupted two or three times by Carol Cobb for telephone calls to Respondent Hatcher. The standard procedure in Respondent's office at that time was for staff members who needed to speak with the doctor to knock on the door and then enter. Carol Cobb observed both Respondent Hatcher and Patient Williams during her entries into the examining room and saw nothing unusual about either of them. Respondent Hatcher was observed by Carol Cobb on at least one occasion on the outside of the examination room dictating notes.

13. Carol Cobb was present when Loretta Gail Williams came out of the examining room and left the building. Carol Cobb formed the opinion, based upon her observations of patient Williams during both her check-in and departure, that Loretta Gail Williams was exhibiting a confused demeanor.

14. On April 27, 1990, following her medical examination by Respondent Hatcher, Loretta Gail Williams alleged to Greensboro police that she had been raped by Respondent Hatcher. She was seen immediately after the alleged rape by Dr. Raymond Cox, an Obstetrician who had given her medical care during the delivery of one or more of her children. Dr. Cox, along with personnel of the Greensboro Police Department, conducted a rape investigation. Dr. Cox solicited information from Loretta Gail Williams and took physical evidence, including pubic hair combings, vaginal smears, and sperm residue found in her underpants. At the time of this examination by Dr. Cox, Loretta Gail Williams had not bathed or showered and was wearing the same clothes she had been wearing during her visit to Respondent Hatcher's office.

15. Loretta Gail Williams told Dr. Cox that Respondent Hatcher had attempted to penetrate her vagina but had not actually done so. In contrast, she testified, during her deposition for this contested case hearing, that she was 100 percent sure that Respondent Hatcher had entered her vagina with his penis.

16. Laboratory tests identified the sperm residue found in patient Williams's underpants as that of her husband. No physical evidence of rape by Respondent Hatcher was found. No physical evidence of a rape of Loretta Gail Williams by Respondent Hatcher was found in the samples of his clothes, hair, saliva, and other material collected from him by the police on April 27, 1990.

17. Loretta Gail Williams's deposition testimony reflects that she was facing away from Respondent Hatcher at the time the alleged rape occurred. She was bending over at her waist with her paper gown open at the back and with her underpants partially down. She did not see Respondent Hatcher's penis or see his pants down or unzipped at any time. She heard a rustling noise and then fell forward and held onto a chair in front of her after she heard the rustling noise and felt him behind her.

18. Loretta Gail Williams did not complain to Respondent Hatcher or to any of the office staff, including the receptionists following her medical examination. Respondent Hatcher was tried and acquitted on the criminal charge of rape of Loretta Gail Williams.

19. Loretta Gail Williams's medical records indicate that, at the time of her alleged molestation and rape by Respondent Hatcher, she had been in psychotherapy or some other form of mental health or substance abuse treatment almost continuously for over ten years, or since the age of thirteen. Since 1980, she has been diagnosed as suffering from a reactive disorder, post-traumatic stress disorder, adjustment disorder with disturbance of conduct, adjustment disorder with mixed emotional features, post-partum depression, major depression, dysthymic disorder, compulsive disorder, personality disorder, dependent and borderline personality traits, and anxiety disorder with histrionic traits. On at least two occasions both before and after the alleged incident with Respondent Hatcher, her mental condition deteriorated to the point that she required psychiatric hospitalization, on both a voluntary and involuntary basis.

20. Loretta Gail Williams' medical records indicate that, prior to the alleged incident with Respondent Hatcher, she claimed to be the victim of physical and sexual abuse, including attempted rape, at the hands of her father, her ex-husband, a gang of girls, and a gang of boys. Her medical history indicates a history of alcohol abuse and drug dependency. In July, 1994, Loretta Gail Williams reported that she had smoked a marijuana cigar daily for the past nine years, which would include the day on which she visited Respondent Hatcher's office on April 27, 1990.

21. The news media in Greensboro carried out extensive coverage of the Loretta Gail Williams rape charge and trial. Other of the complaining females described in this contested case read the news articles about the Williams rape charge and called the Police Department in Greensboro with complaints of inappropriate examinations by Respondent Hatcher.

22. Patient B testified during the hearing of this contested case. She saw Respondent Hatcher on March 27, 1990 seeking a 100 percent disability determination for Social Security payments. Patient B's presenting complaint was of low back pain experienced after a car accident.

23. As a part of a medical examination of Patient B on March 27, 1990, Respondent Hatcher examined her

breasts. Patient B felt that Respondent Hatcher's breast exam was more caressing as if to stimulate rather than to diagnose. She felt that Respondent Hatcher spent too long feeling and massaging both breasts. Respondent Hatcher had her walk across the room and perform other motions such as squatting and bending as part of his examination.

24. Patient B testified that she was angry after this exam. She did not complain about the exam to Respondent Hatcher during the exam or to his staff when leaving the premises. Patient B saw the newspaper articles about Respondent Hatcher being charged with rape by Loretta Gail Williams and decided to call Detective Spagnola of the Greensboro Police Department. In her statement to the Police Department, Patient B stated that she was uncomfortable when Respondent Hatcher entered the exam room where she waited, clad in a cloth gown and panties, because there was no chaperone. She further stated that she became even more uncomfortable when Respondent Hatcher began his breast examination because he was looking at her breasts, something her gynecologist did not do.

25. Patient C testified in this contested case hearing. She was seen by Respondent Hatcher in his office on April 24, 1990 following referral from sports medicine for pain in her right leg and arm. She was dressed in her underpants and a paper hospital gown for the examination which lasted for fifteen to twenty minutes. Patient C felt that Respondent caressed her breasts in a sexual fashion rather than in a clinical fashion. Patient C was accustomed to the examiner using his or her fingertips in a circular or rotating motion on her breasts, which Respondent Hatcher did not do. She also felt that he kneaded or massaged her breasts with more force than required to perform the exam. Patient C experienced discomfort during the exam when Respondent Hatcher administered a strength test in which he pulled on her elbows while she faced away from him and again while she faced him. On both tests, she was drawn toward Respondent Hatcher until she fell onto his lap. Respondent Hatcher sat on each occasion with his legs spread and his back against the examining table. Patient C felt what she believes was Respondent Hatcher's penis when she fell onto his lap. She cannot say whether his penis was erect.

26. Patient C informed Respondent Hatcher prior to his performing a breast exam that she recently had had a breast exam. Patient C's medical history, available to Respondent Hatcher at the time, indicated that both her grandmother and mother had experienced breast cancer. Respondent Hatcher explained to Patient C that her family history of breast cancer was the reason for his performing one in spite of her recent exam. Patient C did not complain to Respondent Hatcher or to any of his office staff on the day of her exam in his office. Patient C did call Respondent Hatcher's office after leaving that day and informed the receptionist or nurse that she was not going to pay her bill. She did not indicate why. A few days later, after seeing the media reports regarding Loretta Gail Williams rape charge against Respondent Hatcher, she called the Greensboro Police Department about her examination on April 24, 1990.

27. Patient D testified in this contested case hearing. She was seen by Respondent Hatcher on May 8, 1989 because of physical complaints including pain in her left arm, left shoulder, and neck. She was dressed in her underpants and a paper hospital gown for the examination. She was uncomfortable with the breast exam performed by Respondent Hatcher because he, unlike her gynecologist, placed his whole hand on her breast and looked at them during the examination. She also felt that Respondent Hatcher moved her breasts around more than her gynecologist did in examining lymph nodes under her arms.

28. Patient D also felt uncomfortable when Respondent Hatcher had her face away from him and bend at the waist. She felt Respondent Hatcher's genital area come into contact with her buttocks and felt what she believes was the shape of his erect penis. Patient D further felt uncomfortable when Respondent Hatcher conducted a strength test in which he held down on her wrist while she tried to raise her arm. Respondent Hatcher released the pressure on her wrist, resulting in her arm touching his groin area where she again felt what she believes was his erect penis.

29. Patient D did not complain to Respondent Hatcher or to any of his office staff on the day of her examination. She went back to her referring physician but did not complain to him about Respondent Hatcher. After reading the newspaper accounts of the Loretta Gail Williams rape charge, she developed the belief that her examination had been significant and called Detective Spagnola of the Greensboro Police Department about her examination on May 8, 1989.

30. Patient E did not testify in this contested case hearing. Her deposition was offered and admitted under G.S. 150B-39(a). Patient E was examined by Respondent Hatcher for a determination of disability regarding Social Security disability benefits. Patient E's deposition discloses that she was uncomfortable during Respondent Hatcher's examination of her because the first thing he had her do was to bend forward whereupon he reached around her from behind and grabbed and wiggled her breasts for five minutes or so. During this time Patient E was dressed only in a

paper hospital gown. She alleges that she could feel Respondent Hatcher's penis, which she felt was erect. Also during this exam, she felt that Respondent Hatcher intentionally rubbed his erect penis against her hand while she lay on her back during a breast exam.

31. Patient E told the Greensboro Police that while she was waiting alone in the examining room before the exam began, she felt as if someone were watching her from behind a picture across the room. Patient E has been psychiatrically evaluated for chronic pain, anxiety, depression, irritability, and suicidal thoughts. Patient E has been diagnosed as having a psychopathic deviancy. Patient E's deposition testimony, under the facts of this case, does not have sufficient indicia of trustworthiness to support findings of fact based upon it.

32. Patient F did not testify in this contested case bearing. Her estranged husband filed an alienation of affections suit against Respondent Hatcher prior to the hearing of this contested case. Patient F appeared as a witness in that civil suit and was deposed before trial. Pages 74-79 of her deposition in that civil matter concerned events between her and Respondent Hatcher in his office and were offered and admitted into evidence in this contested case hearing under G.S. 150B-39(a).

33. Respondent Hatcher admits that patient F was a patient with whom he engaged in a consensual sexual relationship from approximately January-March, 1990. Respondent Hatcher and patient F did not engage in sexual intercourse in his office. During the time Respondent Hatcher and patient F were engaged in a sexual relationship, he provided medical examinations and treatment to her in his office. He conducted a medical examination of patient F on approximately January 31, 1990, the day before their first clandestine meeting away from the office. Respondent Hatcher and patient F usually met at her mother-in-law's house for sexual encounters, upon her suggestion and arrangement.

34. Patient F's deposition testimony indicates that Respondent Hatcher removed her underpants during the examination on January 31, 1990 and fondled her vaginal area after having conducted a breast exam. There is no evidence in the record that patient F objected at any time to any of Respondent's medical examinations. The record indicates that patient F not only failed to object, but actively participated by suggesting a meeting place where they would not be disturbed. Respondent Hatcher believes that patient F and her estranged husband were just after money during the entire affair. Respondent Hatcher entered an out of court settlement of the alienation of affections suit brought by patient F's husband with patient F as a key witness. As a part of the out of court money settlement, all statements and allegations against Respondent were withdrawn.

35. Patient F's deposition testimony from the alienation of affections suit demonstrates an inherent bias, in view of the ultimate disposition of that matter by financial remuneration and her withdrawal of statements and allegations against Respondent Hatcher. Even though she was not a party to that suit, her interests were allied with those of her husband and she was established as her husband's witness. Her cold deposition statements from this prior civil suit, without her live testimony, are, under the facts of this case, insufficiently trustworthy to be found as facts. Patient F's deposition statements, to the extent that they are inconsistent with the testimony of Respondent Hatcher, are not credible.

36. Patient G did not testify in this contested case hearing. Her deposition transcript was offered and admitted into evidence. Patient G was seen by Respondent Hatcher on several occasions for severe migraine headaches, numbness of the face and an eye condition which caused an eye to roll back. She was given a breast exam which she felt was not typical because Respondent Hatcher did it while she stood whereas her gynecologist had her lie down for breast exams. After a hospital stay, patient G again had a breast exam performed by Respondent Hatcher. During this exam, which Respondent performed from behind her, he brushed up against her in a way which she, at the time, did not consider anything more than incidental.

37. Patient G did not find reason to complain, and did not complain, to Respondent Hatcher about his conduct on any of her medical examinations or treatment visits. She did not make any report of her examinations until after reading the news accounts of the assault charges brought against Respondent Hatcher by Loretta Gail Williams. During her deposition, patient G gave contradictory statements about whether or when she observed an erection in Respondent Hatcher's pants and on which visit he brushed against her.

38. Patient H testified during this contested case hearing. She was seen by Respondent Hatcher on August 8, 1989 in the emergency room of Wesley Long Hospital in Greensboro for a pre-admission examination. Patient H was experiencing back and neck pain following a myelogram. She went to the hospital wearing only a cotton gown and no

underwear because of her severe pain and limited ability to move and to use the bathroom without assistance. Patient H's complaint, which she lodged only after reading the press reports concerning the rape charge brought by Loretta Gail Williams, is that Respondent Hatcher stood at the foot of the hospital bed or stretcher on which she lay on her right side and asked her to raise her left leg. Respondent Hatcher continued to ask her to raise her left leg higher than she could or would. Since she had no underpants on, she felt that Respondent Hatcher was only trying to look at her vaginal area. She refused to cooperate further in this examination, telling Respondent Hatcher to "get the hell out" and "I'm not here to do fucking calisthenics".

39. Patient I did not testify at this contested case hearing. Her deposition transcript was admitted into evidence. Patient I was examined by Respondent Hatcher in 1981 or 1982 for headaches and neck pain. She was uncomfortable with the breast exam he performed because she had told him that her gynecologist had performed a breast exam the month before and because she felt that his breast exam was more of a man and woman stimulus event rather than a clinical breast exam. Patient I did not complain to Respondent Hatcher or to any of his staff about his conduct of a breast exam. After seeing press reports about the Loretta Gail Williams rape charge some nine years later, she called the Greensboro Police Department with her statements.

40. Patient J did not testify during this contested case hearing. Her deposition transcript was admitted into evidence. She was seen by Respondent Hatcher in approximately 1978 for headaches and neck pain. After seeing press reports of the Loretta Gail Williams rape charge, she called the Greensboro Police Department to report that she did not know why Respondent performed a breast exam on her twelve years prior when all of her pain was in her head and neck.

41. Patient K did not appear and testify during this contested case hearing. Her deposition transcript was admitted into evidence. She was seen by Respondent Hatcher in 1976 for back and neck pain. She felt the breast exam conducted by Respondent Hatcher was unnecessary and that he did not have any right to touch her breasts. She made no complaint about this breast exam until she read press reports fourteen years later about the Loretta Gail Williams rape charges against Respondent.

42. Patient L did not testify in this contested case hearing. A videotaped deposition she gave in a civil suit filed by Loretta Gail Williams was offered and admitted into evidence. Respondent Hatcher examined Patient L on January 13, 1989 for neck pain and headaches. She was dressed in a paper hospital gown and her underpants, bra, and pantyhose. Respondent conducted a breast exam on only one breast by removing one side of her bra. Patient L felt that the exam was unusual because it appeared to be more in the nature of a massaging of her breast rather than a clinical examination. She could feel what she believed to be an erect penis in Respondent's pants rubbing against her leg as he examined her breast and again when he sat on her foot as it rested on a stool beside the examining table.

43. Patient M did not testify in this contested case. Her deposition transcript was admitted. She was seen by Respondent Hatcher on January 10, 1990 for complaints including seizures and neck pain. Patient M was dressed in a paper hospital gown, her bra, and underpants for the examination. During the course of her examination by Respondent Hatcher she became uncomfortable with the examination and put her clothes back on when he momentarily stepped out of the room. When Respondent Hatcher returned, he continued the exam by performing a breast exam which Patient M believed was fondling. Patient M did not complain to Respondent Hatcher or his staff about this exam. She gave a statement to Greensboro Police after Loretta Gail Williams rape charge was reported in the news media.

44. Patient N testified during this contested case hearing. She was seen by Respondent Hatcher on December 18, 1989 for complaints including neck pain following an automobile accident. Patient N wore a paper hospital gown and underpants for her examination. Respondent Hatcher conducted a breast exam which she considered normal and similar to the ones performed by her gynecologist. Following a breast exam, Respondent had patient N stand between his legs facing him while he reached around her and palpated her back muscles. She felt that Respondent Hatcher was intentionally pulling her into him and began to resist, telling Respondent Hatcher that the exam had gone beyond a medical exam. Respondent Hatcher then took both breasts into his hands. Patient N felt that Respondent's voice had become coarse and that he had lost control of himself during this part of the exam.

45. Patient O did not testify in this contested case hearing. Her deposition transcript was admitted. She was seen by Respondent Hatcher during the summer of 1989 for a history of blackouts or near blackouts. She wore only a paper hospital gown for her examination by Respondent who conducted a breast exam and palpation of her lower

abdomen and thighs in a manner which, considering the entire exam, made her uncomfortable. She believed that a chaperone should have been present but made no complaint to Respondent or to any of his staff. She gave a statement to Greensboro Police after reading about Loretta Gail Williams rape charge against Respondent in the newspapers.

46. Patient P did not testify in this contested case hearing. Her deposition transcript was admitted. Patient P was examined by Respondent Hatcher on August 27, 1984 for complaints including lower back pain. Patient P was 41 years old at the time of this examination. Patient P alleges that she was sexually abused by her father and an uncle earlier in her youth and has been under psychiatric care since about 17 years old. As of her deposition, she had been hospitalized on four occasions for mental disorders, the last of which occurred within one month of her deposition. Patient P states that she is so sensitive to sexual matters that she became angry at a female shoe salesperson once for putting her grandson's foot between her legs while trying shoes on him.

47. Patient P alleges that she wore only a paper hospital gown for her examination by Respondent. She alleges that he performed a breast exam which began as a normal exam but became a sexual fondling by Respondent. She also alleges that Respondent had an erection in his pants when the exam began and that he rubbed his penis against her arm or hand and that he placed her foot on his erect penis while he sat below the exam table on a stool. Patient P did not report this activity or make any complaints until she read press reports of the Loretta Gail Williams rape charge six years after her own exam.

48. The deposition testimony of Patient P, in the absence of her live testimony, raises substantial questions about its reliability in matters of a sexual nature because of her personal history of sexual abuse, her subsequent and practically constant psychiatric episodes, and her demonstrated hypersensitivity to sexual matters. Patient P's testimony does not have credibility sufficient to support findings of fact based upon it.

49. Patient Q did not testify in this contested case hearing. Her deposition transcript was admitted. Patient Q was seen by Respondent Hatcher in June, 1989 for a medical examination related to her complaints of left hand numbness. Patient Q wore only a paper hospital gown for this examination. She had received three prior unremarkable medical examinations by Respondent. During this fourth examination, patient Q became highly upset and experienced an anxiety or panic attack. Respondent stood between her legs as she sat on the exam table and hugged her for a lengthy period of time when she experienced the panic attack and began to cry. As Respondent hugged her, she felt his erect penis pressing against her hand and terminated the hug by pushing him away from her. On a subsequent visit to Respondent's office, patient Q insisted on the presence of her mother in the examining room. Patient Q was twenty-six years old at the time of her fourth exam by Respondent. Patient Q contacted the Greensboro Police and Petitioner after news stories reported the Loretta Gail Williams rape charges brought against Respondent Hatcher.

50. Respondent Hatcher admitted in his answers to Petitioner's requests for admission under G.S.1A-1 Rule 36 that a physician who performs a physical examination of the breasts or other private areas of the body of his female patient for the satisfaction of his own personal purposes has, under the standards of acceptable and prevailing medical practice in North Carolina, engaged in exploitation of that patient.

51. G.S. 90-14(a)(1) and (6) (Cum. Supp. 1995) provide in pertinent part:

(a) The Board shall have the power to deny, annul, suspend, or revoke a license, or other authority to practice medicine in this State, issued by the Board to any person who has been found by the Board to have committed any of the following acts or conduct, or for any of the following reasons:

- (1) Immoral or dishonorable conduct.
- (6) Unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice, or good morals, whether the same is committed in the course of his practice or otherwise, and whether committed within or without North Carolina.

CONCLUSIONS OF LAW

Based upon the Foregoing Findings of Fact, I make the following Conclusions of Law.

1. The parties properly are before the Office of Administrative Hearings.
2. Respondent Martin A. Hatcher did not engage in an attempt to rape, and did not rape, or sexually molest or exploit Loretta Gail Williams during his medical examination of her on April 27, 1990.
3. Respondent Martin A. Hatcher engaged in sexually exploitative conduct with female patients B,C,D,M,N, and Q during medical examinations of them in his office by performing medical examinations which went beyond the boundaries of medial purpose and entered the area of private purpose within the physician/patient relationship in which the patients extended trust to the physician to exercise appropriate professional judgment. The cumulative weight of the numerous instances of contact between the groin area of the physician and various parts of the bodies of female patients when those female patients were disrobed or dressed only in underpants and open-backed paper gowns and the cumulative weight of the numerous instances of breast exams by the physician which alarmed patients because it departed from the clinical to a private purpose of the male physician are sufficient to support a conclusion that Respondent engaged in exploitative conduct with the named female patients. Although specific violations of G.S. 90-14(a)(1) and (6) are not established by the evidence as to patients G,H,I,J,K,L, and O, the cumulative weight of their testimonies supports the conclusions reached as to patients B,C,D,M,N, and Q.
4. Respondent Martin A. Hatcher has violated G.S.90-14(a)(1), prohibiting immoral conduct, by engaging in sexually exploitative conduct with female patients B,C,D,M,N, and Q which is inimical to the standards of the community as expressed in the law and is unprincipled. Black's Law Dictionary 676 (5th ed. 1979).
5. Respondent Martin A. Hatcher violated G.S. 90-14(a)(6), prohibiting unprofessional conduct, by engaging in sexually exploitative conduct with female patients B,C,D,M,N, and Q which departs from and fails to conform to the standards of acceptable and prevailing medical practice in North Carolina.
6. Petitioner North Carolina Medical Board has the authority, under G.S. 90-14(a) to suspend or revoke the license to practice medicine held by Respondent Martin A. Hatcher for engaging in immoral and unprofessional conduct by sexually exploiting female patients.

PROPOSED DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby proposed that the North Carolina Medical Board suspend, for a period of one (1) year, the license to practice medicine held by Martin A. Hatcher on the grounds that he has violated G.S. 90-14(a)(1) and (6) by engaging in immoral and unprofessional conduct with female patients. Suspension rather than the more drastic remedy of revocation is proposed because, although the cumulative weight of the evidence supports the imposition of sanctions, it must be recognized that much of the evidence was developed only after extensive press reports concerning the Williams rape charge were read by other patients or former patients, some of whom alleged examination incidents as remote as 12-14 years. It also must be noted that many of the female complainants were made uneasy from the outset by the unexpected prospect of a neurologist conducting a breast exam rather than a gynecologist or family practitioner.

It is proposed that the Board condition reinstatement of the license of Respondent Hatcher to include a provision barring his treatment of female patients.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions and proposed findings of fact and to present oral and written arguments to the agency. G.S. 150B-40(e).

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. G.S. 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Medical Board.

This the 28th day of June, 1996.

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Beecher R. Gray  
Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
96 ABC 0160

GERALD AUDRY SELLARS, )  
T/A ACES & ASSOCIATES, )  
Petitioner, )  
v. )  
ALCOHOLIC BEVERAGE CONTROL COMMISSION, )  
Respondent. )

RECOMMENDED DECISION

This matter was heard before the undersigned administrative law judge in Burgaw, North Carolina on May 16, 1996.

APPEARANCES

For Petitioner: YOW, FOX, & MANNEN, Attorneys at Law, Wilmington, North Carolina; Jerry A. Mannen, Jr. appearing.

For Respondent: Melissa C. Owens, Assistant Counsel, N.C. ABC Commission, Raleigh, North Carolina.

ISSUES

Whether the Respondent's denial of the Petitioner's application for ABC permits for on-premise beer, unfortified, fortified wine, and brown bagging private club, on the grounds of local government objections and that the operation of the business tends to show that applicant would not abide by the ABC laws, is proper.

STATUTES AND RULES INVOLVED

N.C. Gen. Stat. § 18B-901(c)(7)  
N.C. Gen. Stat. § 18B-901(c)(8)

EXHIBITS

The following exhibits offered by the Petitioner were received in evidence:

- P1. Membership Card for Aces & Associates.
- P2. Aces & Associates' rules and bylaws.
- P3. Membership Application.
- P4. Roster of club membership.

The following exhibits offered by the Respondent were received in evidence:

- R1. Diagram of Aces & Associates.
- R3. Official Warning dated November 14, 1995.
- R4. Official Warning dated November 14, 1995.

Respondent's exhibit two, the documents contained in the Petitioner's application file, is received for the purpose of demonstrating the basis for the Respondent's decision to deny the Petitioner's application and not for the truth of the matters asserted therein.

Based upon the official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, the undersigned makes the following:

FINDINGS OF FACT

1. The Petitioner, Gerald Audry Sellars, and his brother own the property on the corner of 13th and Castle Streets in Wilmington, North Carolina. Aces & Associates is located in a portion of the building. The building also houses a grocery business known as Sellars Brothers.
2. The Petitioner's application for on-premise beer, unfortified/fortified wine, and brown-bagging private club permits was denied by the Respondent on January 10, 1996.
3. The Respondent notified the Petitioner that his application was being denied due to "Local government objections that location is not suitable to hold ABC permit" and a finding that the "Operation tends to show that applicant would not abide by the ABC laws."
4. The Petitioner was issued Temporary Permits pending the investigation of his permit application.
5. Diane Patricia Jenski, an ALE agent based in Wilmington, was assigned to investigate the Petitioner's application, including the physical facilities.
6. On November 14, 1995 Agent Jenski went to Aces & Associates. She was accompanied by another ALE agent, Steve Deacon.
7. When Agents Jenski and Deacon arrived at Aces & Associates, they found all of the outside entrances to the club locked. They entered Sellars Brothers and were able to gain access to Aces through a connecting door.
8. Upon entering Aces, Agent Jenski observed several people playing cards at the end of the bar.
9. Agent Jenski and Petitioner went into the Petitioner's office where she reviewed the ABC Laws and Regulations with the Petitioner.
10. Agent Deacon picked up a vinyl notebook he observed in the Petitioner's office and began flipping through the pages. He discovered what he believed, based upon his training and experience conducting other investigations, was a lottery ticket. It was determined that Matthew Lemon, a friend of the Petitioner, was the owner of the notebook. Agent Deacon charged Mr. Lemon with unlawful possession of a lottery ticket.
11. The Petitioner had beer on the premises, but he did not have any receipts for the beer. He said he got the beer from Sellers Brothers. Agent Jenski issued the Petitioner an Official Warning for procuring beer from an unauthorized wholesaler.
12. The Petitioner did not have individual lockers or a membership roster on the premises on November 14, 1995.
13. Agent Jenski observed a legal pad with tic tac toe lines and numbers on it. Based upon her training and experience, Agent Jenski identified the game on the legal pad as being a game of chance. She issued the Petitioner an official warning.
14. Agent Jenski determined that the location of Aces was a suitable one for holding ABC permits.
15. A Local Government Opinion Form was sent the City of Wilmington's Chief of Police, Ricky W. Simpson. Chief Simpson did not object to the location. However, based upon his officers' investigation of the Petitioner, Chief Simpson was of the opinion that the types of activities the Petitioner allowed to occur on his premises were detrimental to the community. Chief Simpson informed the ABC Commission that there was local governmental objection to the applicant.
16. Dean Gronau has been employed with the Wilmington Police Department for eleven years. He has known the Petitioner since 1985. Mr. Gronau conducted the investigation of Petitioner's application for ABC permits for the Wilmington Police Department.
17. Based upon what he observed when he visited Aces and upon Sellers Brothers having been cited for possessing

lottery tickets in 1994, Mr. Gronau was of the opinion that the Petitioner was facilitating the occurrence of lottery activity on the premises of Aces. Mr. Gronau heard a bell or buzzer while he was in Aces and determined that there was a button behind the counter in Sellers that caused the buzzer to ring in Aces. Mr. Gronau also observed that the only supplies in the Petitioner's office were a box of envelopes and a note book.

18. Although the Petitioner testified that the purpose of the buzzer was to notify him that he had a phone call or that suppliers were coming back, Mr. Gronau did not observe any sales people on the premises when he heard the buzzer and the Petitioner did not take any phone call at that time.
19. Mr. Gronau prepared a report which went to the Police Chief and which formed the basis for Chief Simpson's objection to issuance of ABC permits to the Petitioner.
20. North Carolina General Statutes section 18B-901(c) provides that before issuing a permit, the ABC Commission shall be satisfied that the applicant is a suitable person to hold an ABC permit for which he has applied and that the location is a suitable location for the ABC permits for which she has applied.

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

**CONCLUSIONS OF LAW**

1. The North Carolina Alcoholic Beverage Control Commission has the sole authority to determine the qualifications of an applicant and the suitability of a location for the issuance of alcoholic beverage permits and to issue or deny the permits according to the ABC Laws and Regulations. N.C. Gen. Stat. §§18B-203(12) and 18B-901(d).
2. There is no evidence that the location is not a suitable one to hold ABC permits.
3. The Petitioner's receipt of two official warnings while possessing temporary ABC permits and his close association with Sellers Brothers, a business that has previously been cited for ABC violations, provides the Respondent a sufficient basis for concluding that the "operation [of the Petitioner's business] would tend to show that the applicant would not abide by the ABC laws."

**RECOMMENDED DECISION**

The North Carolina Alcoholic Beverage Control Commission ("Commission") will make the Final Decision in this contested case. It is recommended that the Commission adopt the Findings of Fact and Conclusions of Law set forth above and affirm its decision to disapprove the Petitioner's application.

**ORDER**

It is hereby ordered that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes section 150B-36(b).

**NOTICE**

Before the Commission makes the FINAL DECISION, it is required by North Carolina General Statutes section 150B-36(a) to give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the final decision.

The Commission is required by North Carolina General Statutes section 150B-36(b) to serve a copy of the FINAL DECISION on all parties and to furnish a copy to the Parties' attorney of record.

This the 25th day of June, 1996.

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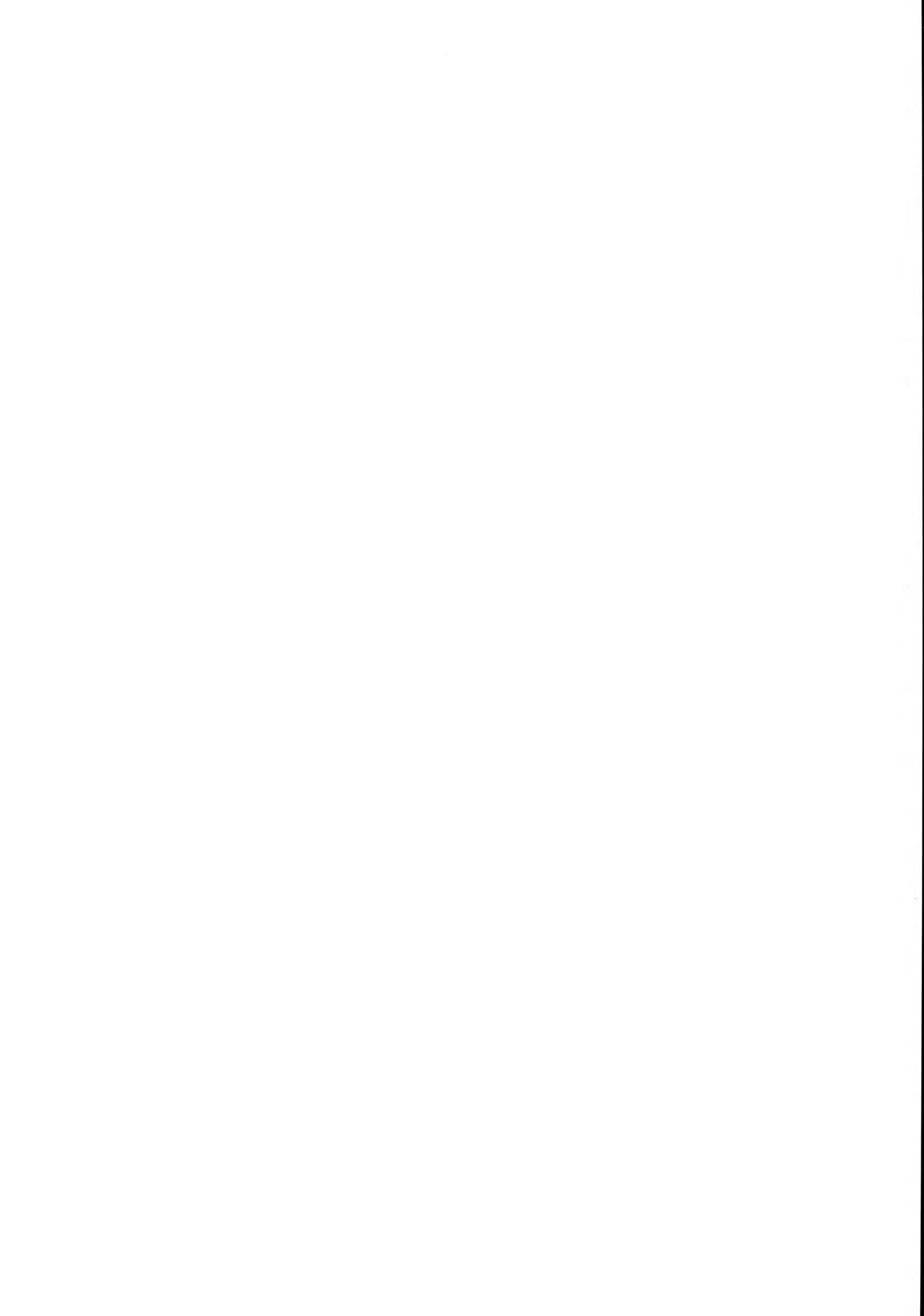
Brenda B. Becton  
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

## TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Auctioneers	4
4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
13	Labor	Foresters	20
14A	Crime Control & Public Safety	Geologists	21
15A	Environment, Health, and Natural Resources	Hearing Aid Dealers and Fitters	22
16	Public Education	Landscape Architects	26
17	Revenue	Landscape Contractors	28
18	Secretary of State	Marital and Family Therapy	31
19A	Transportation	Medical Examiners	32
20	Treasurer	Midwifery Joint Committee	33
*21	Occupational Licensing Boards	Mortuary Science	34
22	Administrative Procedures	Nursing	36
23	Community Colleges	Nursing Home Administrators	37
24	Independent Agencies	Occupational Therapists	38
25	State Personnel	Opticians	40
26	Administrative Hearings	Optometry	42
27	NC State Bar	Osteopathic Examination & Reg. (Repealed)	44
		Pastoral Counselors, Fee-Based Practicing	45
		Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
		Practicing Psychologists	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work Certification	63
		Soil Scientists	69
		Speech & Language Pathologists & Audiologists	64
		Substance Abuse Professionals	68
		Therapeutic Recreation Certification	65
		Veterinary Medical Board	66

Note: Title 21 contains the chapters of the various occupational licensing boards.



**CUMULATIVE INDEX**  
(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				

This index provides information related to notices, rules and other documents published in the Register. The information provided below includes notices and rules published on or after December 1, 1995 and will be cumulative through March 1997. For assistance contact the Rules Division at 919/733-2678.

**Fiscal Note:** S = Rule affects the expenditure or distribution of state funds. L = Rule affects the expenditure or distribution of local government funds. SE = Rule has a substantial economic impact of at least \$5,000,000 in a 12-month period. \* = Rule-making agency has determined that the rule does not impact state or local funds and does not have a substantial economic impact. See G.S. 150B-21.4.

**ACUPUNCTURE LICENSING BOARD**

21 NCAC 01 .0301		10:22 NCR 2860								
21 NCAC 01 .0705	10:17 NCR 2228	10:22 NCR 2834		*						11:04 NCR 220
21 NCAC 01 .0709	10:17 NCR 2228	10:22 NCR 2834		*						11:04 NCR 220

**ADMINISTRATIVE HEARINGS**

26 NCAC 03	11:03 NCR 110
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**ADMINISTRATION**

**State Building Commission**

1 NCAC 30G .0101	11:04 NCR 194
1 NCAC 30G .0102	11:04 NCR 194
1 NCAC 30G .0103	11:04 NCR 194
1 NCAC 30G .0104	11:04 NCR 194
1 NCAC 30G .0105	11:04 NCR 194

**AGRICULTURE**

2 NCAC 09C .0701	10:24 NCR 3056	11:05 NCR 282	11:06 NCR 324	*
2 NCAC 09C .0702	10:24 NCR 3056	11:05 NCR 282	11:06 NCR 324	*
2 NCAC 09C .0704	10:24 NCR 3056	11:05 NCR 282	11:06 NCR 324	*
2 NCAC 48A .0206	10:24 NCR 3056		11:06 NCR 324	*
2 NCAC 48A .0211	10:24 NCR 3056		11:06 NCR 324	*
2 NCAC 48A .0214	10:24 NCR 3056		11:06 NCR 324	*
2 NCAC 48A .1103	10:24 NCR 3056		11:06 NCR 324	*
2 NCAC 48A .1110	10:24 NCR 3056		11:06 NCR 324	*
2 NCAC 48B .0112	10:24 NCR 3056		11:06 NCR 324	*

**CUMULATIVE INDEX**  
(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				

2 NCAC 48B .0114 1:24 NCR 3056  
 2 NCAC 48B .0119 1:24 NCR 3056  
 2 NCAC 48B .0120 1:24 NCR 3056  
 2 NCAC 52B .0201 1:24 NCR 3056

**Plant Conservation Board**

2 NCAC 48F .0301 1:07 NCR 407  
 2 NCAC 48F .0302 1:07 NCR 407  
 2 NCAC 48F .0304 1:07 NCR 407  
 2 NCAC 48F .0305 1:07 NCR 407  
 2 NCAC 48F .0306 1:07 NCR 407

**COMMERCE**

4 NCAC 06C .0205 1:18 NCR 2398  
 4 NCAC 06C .0407 1:18 NCR 2398  
 4 NCAC 06C .0409 1:18 NCR 2398

**State Ports Authority**

4 NCAC 13 1:24 NCR 3056

**COMMUNITY COLLEGES**

23 NCAC 02D .0325 1:24 NCR 3058  
 23 NCAC 02E .0203 1:24 NCR 3058  
 23 NCAC 03A .0113 1:24 NCR 3058

**CULTURAL RESOURCES**

7 NCAC 05 .0202 1:18 NCR 2398  
 7 NCAC 05 .0203 1:18 NCR 2398  
 7 NCAC 05 .0204 1:18 NCR 2398  
 7 NCAC 05 .0207 1:18 NCR 2398

**USS North Carolina Battleship Commission**

7 NCAC 05 .0202 1:04 NCR 188  
 7 NCAC 05 .0203 1:04 NCR 188  
 7 NCAC 05 .0204 1:04 NCR 188  
 7 NCAC 05 .0207 1:04 NCR 188

**CUMULATIVE INDEX**  
(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				

**ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

15A Public Notice 11:01 NCR 2

15A NCAC 01K 10:19 NCR 2506

15A NCAC 01M .0101 11:06 NCR 368

15A NCAC 01M .0102 11:06 NCR 368

15A NCAC 01M .0201 11:06 NCR 368

15A NCAC 01M .0202 11:06 NCR 368

15A NCAC 01M .0301 11:06 NCR 368

15A NCAC 01M .0302 11:06 NCR 368

15A NCAC 01M .0303 11:06 NCR 368

15A NCAC 01M .0304 11:06 NCR 368

15A NCAC 01M .0305 11:06 NCR 368

15A NCAC 01M .0306 11:06 NCR 368

**Coastal Resources Commission**

15A NCAC 07 11:04 NCR 183

15A NCAC 07H .0104 10:24 NCR 3045

11:07 NCR 409 \*

15A NCAC 07H .0106 10:16 NCR 1921

11:04 NCR 190 \*

15A NCAC 07H .0304 10:24 NCR 3045

11:07 NCR 409 \*

15A NCAC 07H .0309 11:08 NCR 442

11:04 NCR 190 \*

15A NCAC 07J .0102 10:24 NCR 3045

11:04 NCR 190 \*

15A NCAC 02 10:24 NCR 3045

11:04 NCR 183

15A NCAC 02B .0223 11:02 NCR 75

11:03 NCR 109

15A NCAC 02B .0224 10:18 NCR 2400

10:18 NCR 2400

15A NCAC 02B .0227 11:03 NCR 109

11:03 NCR 109

Notice Subject Matter

## CUMULATIVE INDEX

(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
15A NCAC 02B .0303		10:18 NCR 2400								
15A NCAC 02B .0315	11:02 NCR 75									
15A NCAC 02D .0518	10:24 NCR 3045				11:08 NCR 472	*				
15A NCAC 02D .0524	10:24 NCR 3045				11:08 NCR 472	*				
15A NCAC 02D .0530	10:24 NCR 3045				11:08 NCR 472	*				
15A NCAC 02D .0902	10:24 NCR 3045				11:08 NCR 472	*				
15A NCAC 02D .0907	10:24 NCR 3045				11:08 NCR 472	*				
15A NCAC 02D .0909	10:24 NCR 3045				11:08 NCR 472	*				
15A NCAC 02D .0910	10:24 NCR 3045				11:08 NCR 472	*				
15A NCAC 02D .0911	10:24 NCR 3045				11:08 NCR 472	*				
15A NCAC 02D .0946	10:24 NCR 3045				11:08 NCR 472	*				
15A NCAC 02D .0954	10:24 NCR 3045				11:08 NCR 472	*				
15A NCAC 02D .1100	11:08 NCR 442									
15A NCAC 02D .1110	10:24 NCR 3045				11:08 NCR 472	*				
15A NCAC 02D .1111	10:24 NCR 3045				11:08 NCR 472	*				
15A NCAC 02D .1402	10:24 NCR 3045				11:08 NCR 472	*				
15A NCAC 02D .1403	10:24 NCR 3045				11:08 NCR 472	*				
15A NCAC 02H .0610	11:08 NCR 442									
15A NCAC 02L .0106										
15A NCAC 02L .0202	10:20 NCR 2591									
15A NCAC 02P .0402										
15A NCAC 02Q .0102					10:19 NCR 2512					
15A NCAC 02Q .0102	10:24 NCR 2400						11:06 NCR 350	*		
15A NCAC 02Q .0104	10:24 NCR 2400						11:08 NCR 472			
15A NCAC 02Q .0107	10:18 NCR 2400						11:08 NCR 472	*		
15A NCAC 02Q .0507	10:24 NCR 2400						11:08 NCR 472	*		
15A NCAC 02Q .0512	10:24 NCR 2400						11:08 NCR 472			
15A NCAC 02Q .0514	10:24 NCR 2400						11:08 NCR 472			

**CUMULATIVE INDEX**  
(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
15A NCAC 02Q .0515	10:24 NCR 2400				11:08 NCR 472		S/L			
15A NCAC 02Q .0517	10:24 NCR 2400				11:08 NCR 472		S/L			
15A NCAC 02Q .0700	11:08 NCR 442									
NPDES Permits										
NPDES Permits										

**Health Services, Commission for**

15A NCAC 13B .1627	11:08 NCR 442									
15A NCAC 13B .1800	11:08 NCR 442									
15A NCAC 13C .0301	10:18 NCR 2317									
15A NCAC 13C .0302	10:18 NCR 2317									
15A NCAC 13C .0303	10:18 NCR 2317									
15A NCAC 13C .0304	10:18 NCR 2317									
15A NCAC 13C .0305	10:18 NCR 2317									
15A NCAC 13C .0306	10:18 NCR 2317									
15A NCAC 13C .0307	10:18 NCR 2317									
15A NCAC 13C .0308	10:18 NCR 2317									
15A NCAC 18A	11:04 NCR 183									
15A NCAC 18A .0134	11:08 NCR 442									
15A NCAC 18A .0136	11:08 NCR 442									
15A NCAC 18A .0137	11:08 NCR 442									
15A NCAC 18A .0159	11:08 NCR 442									
15A NCAC 18A .0168	11:08 NCR 442									
15A NCAC 18A .0169	11:08 NCR 442									
15A NCAC 18A .0173	11:08 NCR 442									
15A NCAC 18A .0174	11:08 NCR 442									
15A NCAC 18A .0175	11:08 NCR 442									
15A NCAC 18A .0176	11:08 NCR 442									
15A NCAC 18A .0182	11:08 NCR 442									

## CUMULATIVE INDEX (April 1996 - March 1997)

**CUMULATIVE INDEX**  
(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
15A NCAC 21J .0101			11:07 NCR 422							
<b>Marine Fisheries Commission</b>										
15A NCAC 03		11:07 NCR 407			10:21 NCR 2737	*			Approve	05/16/96
15A NCAC 031 .0019					10:21 NCR 2688	*			Approve	05/16/96
15A NCAC 031 .0401										*
15A NCAC 03M .0202		11:03 NCR 110								
15A NCAC 03M .0504		11:03 NCR 110								
15A NCAC 03M .0511		11:03 NCR 110								
<b>Soil and Water Conservation</b>										
15A NCAC 06E .0002		11:08 NCR 442								
15A NCAC 06E .0003		11:08 NCR 442								
<b>Wildlife Resources Commission</b>										
15A NCAC 10B .0106		11:02 NCR 76			11:08 NCR 495	*				
15A NCAC 10B .0113		11:07 NCR 408								
15A NCAC 10B .0115		11:07 NCR 408								
15A NCAC 10B .0123		11:02 NCR 76			11:08 NCR 495	*				
15A NCAC 10B .0203		11:02 NCR 76			11:08 NCR 495	*				
15A NCAC 10B .0208		11:02 NCR 76			11:08 NCR 495	*				
15A NCAC 10B .0209		11:02 NCR 76			11:08 NCR 495	*				
15A NCAC 10C .0107		11:02 NCR 76								
15A NCAC 10C .0205		11:02 NCR 76			11:08 NCR 495	*				
15A NCAC 10C .0305		11:02 NCR 76			11:08 NCR 495	*				
15A NCAC 10C .0401		11:02 NCR 76								
15A NCAC 10C .0401		11:07 NCR 408								
15A NCAC 10D .0002		11:02 NCR 76			11:08 NCR 495	*				
15A NCAC 10D .0003		11:02 NCR 76			11:08 NCR 495	*				
15A NCAC 10F .0102		10:19 NCR 2506			11:01 NCR 14	*				
15A NCAC 10F .0103		10:19 NCR 2506			11:01 NCR 14	*				

**CUMULATIVE INDEX**  
 (April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
15A NCAC 10F .0104	10:19 NCR 2506				11:01 NCR 14	*				
15A NCAC 10F .0105	10:19 NCR 2506				11:01 NCR 14	*				
15A NCAC 10F .0106	10:19 NCR 2506				11:01 NCR 14	*				
15A NCAC 10F .0107	10:19 NCR 2506				11:01 NCR 14	*				
15A NCAC 10F .0109	10:19 NCR 2506				11:01 NCR 14	*				
15A NCAC 10F .0300	11:01 NCR 13									
15A NCAC 10F .0302	11:05 NCR 272									
15A NCAC 10F .0303	10:24 NCR 3057				11:06 NCR 355	*				
15A NCAC 10F .0305	10:19 NCR 2506				11:01 NCR 14	*				
15A NCAC 10F .0307	11:02 NCR 76				11:07 NCR 412	*				
15A NCAC 10F .0307	11:08 NCR 451									
15A NCAC 10F .0310	10:19 NCR 2506				11:01 NCR 14	*				
15A NCAC 10F .0310	10:24 NCR 3057				11:06 NCR 355	*				
15A NCAC 10F .0342	10:19 NCR 2506				11:01 NCR 14	*				
15A NCAC 10F .0348	10:19 NCR 2506				11:01 NCR 14	*				
15A NCAC 10G	11:01 NCR 13									
15A NCAC 10G .0100	11:02 NCR 76									
15A NCAC 10G .0102	11:01 NCR 13				11:07 NCR 412	*				
15A NCAC 10G .0103	11:01 NCR 13				11:07 NCR 412	*				
15A NCAC 10G .0202	11:01 NCR 13				11:07 NCR 412	*				
15A NCAC 10G .0203	11:01 NCR 13				11:07 NCR 412	*				
15A NCAC 10G .0206	11:01 NCR 13				11:07 NCR 412	*				
15A NCAC 10G .0302	11:01 NCR 13				11:07 NCR 412	*				
15A NCAC 10G .0303	11:01 NCR 13				11:07 NCR 412	*				
15A NCAC 10G .0401	11:01 NCR 13				11:07 NCR 412	*				
15A NCAC 10G .0402	11:01 NCR 13				11:07 NCR 412	*				
15A NCAC 10G .0403	11:01 NCR 13				11:07 NCR 412	*				
15A NCAC 10G .0404	11:01 NCR 13				11:07 NCR 412	*				

**CUMULATIVE INDEX**  
(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
15A NCAC 10G .0501	11:01 NCR 13				11:07 NCR 412	*				
15A NCAC 10I .0001	10:22 NCR 2829				11:04 NCR 191	*				
15A NCAC 10I .0002	11:02 NCR 76				11:08 NCR 495	*				
Wildlife Proclamation										11:03 NCR 104
Wildlife Proclamation										11:04 NCR 182

**FINAL DECISION LETTERS**

Voting Rights Act					11:01 NCR 1	
Voting Rights Act					11:04 NCR 181	
Voting Rights Act					11:06 NCR 315	
Voting Rights Act					11:07 NCR 405	

**GENERAL CONTRACTORS LICENSING BOARD**

21 NCAC 12 .0204	10:22 NCR 2829	11:06 NCR 372				
21 NCAC 12 .0503	10:22 NCR 2829	11:06 NCR 372				

**GOVERNOR'S EXECUTIVE ORDERS**

Number 95 - Eff. 04/24/96					11:05 NCR 270	
Number 96 - Eff. 06/14/96					11:08 NCR 441	

**HUMAN RESOURCES**

10 NCAC 41P .0013	11:06 NCR 323	11:08 NCR 528				
Aging						
10 NCAC 22	10:23 NCR 2956					
Child Day Care Commission						
10 NCAC 03U .0102			10:20 NCR 2593			
10 NCAC 03U .0604			11:03 NCR 109			
10 NCAC 03U .0700			11:08 NCR 449			
10 NCAC 03U .0704			10:19 NCR 2506			
10 NCAC 03U .0710			11:04 NCR 188	*		
10 NCAC 03U .0901			10:22 NCR 2829			
			11:04 NCR 188	*		
			11:08 NCR 449			

**CUMULATIVE INDEX**  
(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	NRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				

10 NCAC 03U .2510 11:08 NCR 449

10 NCAC 03U .2606 11:08 NCR 449  
10 NCAC 03U .2701 10:20 NCR 2593

10 NCAC 03U .2702 10:20 NCR 2593

10 NCAC 03U .2703 10:20 NCR 2593

10 NCAC 03U .2704 10:20 NCR 2593

**Facility Services**

10 NCAC 03 10:18 NCR 2399

10 NCAC 03R .3001 10:21 NCR 2699

10 NCAC 03R .3001 11:08 NCR 452

10 NCAC 03R .3010 10:21 NCR 2699

10 NCAC 03R .3020 11:08 NCR 452

10 NCAC 03R .3020 10:21 NCR 2699

10 NCAC 03R .3030 11:08 NCR 452

10 NCAC 03R .3030 10:21 NCR 2699

10 NCAC 03R .3030 11:08 NCR 452

10 NCAC 03R .3032 10:21 NCR 2699

10 NCAC 03R .3032 11:06 NCR 328

10 NCAC 03R .3040 10:21 NCR 2699

10 NCAC 03R .3040 11:08 NCR 452

10 NCAC 03R .3040 10:23 NCR 2956

10 NCAC 03R .3050 10:23 NCR 2956

10 NCAC 03R .3050 11:06 NCR 328

**Medical Assistance**

Disproportionate Share List

10 NCAC 26B .0105 10:18 NCR 2398

10 NCAC 26G .0707 11:08 NCR 450

10 NCAC 26I .0506 11:02 NCR 77

10 NCAC 26H .0506 10:21 NCR 2686

10 NCAC 501

04/18/96

\*

11:03 NCR 101

11:04 NCR 207

10:22 NCR 2831

\*

11:03 NCR 101

11:06 NCR 316

## CUMULATIVE INDEX (April 1996 - March 1997)

(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				

10 NCAC 50D .0101 10:24 NCR 3057 11:04 NCR 196  
10 NCAC 50D .0102 10:24 NCR 3057 11:04 NCR 196  
10 NCAC 50D .0103 10:24 NCR 3057 11:04 NCR 196  
10 NCAC 50D .0201 10:24 NCR 3057 11:04 NCR 196  
10 NCAC 50D .0301 10:24 NCR 3057 11:04 NCR 196  
10 NCAC 50D .0302 10:24 NCR 3057 11:04 NCR 196  
10 NCAC 50D .0401 10:24 NCR 3057 11:04 NCR 196  
10 NCAC 50D .0402 10:24 NCR 3057 11:04 NCR 196  
10 NCAC 50D .0501 10:24 NCR 3057 11:04 NCR 196  
10 NCAC 50D .0502 10:24 NCR 3057 11:04 NCR 196  
10 NCAC 50D .0503 10:24 NCP 3057 11:04 NCP 196

National Game Committee

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10 NCAC 14V .3400	11:08 NCR 449	
10 NCAC 14V .3800	11:08 NCR 449	
10 NCAC 14V .5600	11:08 NCR 449	
10 NCAC 15A .0100	11:08 NCR 449	
10 NCAC 45H .0200	11:08 NCR 449	
<b>Health Services Commission</b>		
10 NCAC 41F	10:23 NCR 2956	
10 NCAC 41F .0705	10:23 NCR 2956	
10 NCAC 41F .0706	10:21 NCR 2726	11:03 NCR 111
10 NCAC 41F .0707	10:21 NCR 2726	11:03 NCR 111
10 NCAC 41F .0812	10:21 NCR 2726	11:03 NCR 111
10 NCAC 41F .0813	10:21 NCR 2726	11:03 NCR 111
10 NCAC 41F .0814	10:23 NCR 2956	11:03 NCR 111
10 NCAC 41I .0100	10:17 NCR 2228	L

111

**CUMULATIVE INDEX**  
(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RBC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
10 NCAC 411.0102		10:17 NCR 2228				10:21 NCR 2687	*			
10 NCAC 41P.0002		11:06 NCR 323				11:08 NCR 528				
10 NCAC 41P.0005		11:06 NCR 323				11:08 NCR 528				
10 NCAC 41P.0006		11:06 NCR 323				11:08 NCR 528				
10 NCAC 41P.0008		11:06 NCR 323				11:08 NCR 528				
10 NCAC 41P.0009		11:06 NCR 323				11:08 NCR 528				
10 NCAC 41P.0010		11:06 NCR 323				11:08 NCR 528				
10 NCAC 41P.0011		11:06 NCR 323				11:08 NCR 528				
10 NCAC 41P.0012		11:06 NCR 323				11:08 NCR 528				
10 NCAC 41P.0013						11:08 NCR 528				
10 NCAC 42A.0701						10:21 NCR 2728				
10 NCAC 42A.0702						10:21 NCR 2728				
10 NCAC 42A.0703						10:21 NCR 2728				
10 NCAC 42B.1209						10:21 NCR 2729				
10 NCAC 42B.1210						10:21 NCR 2729				
10 NCAC 42B.1211						10:21 NCR 2729				
10 NCAC 42B.2402						10:21 NCR 2729				
10 NCAC 42B.2403						10:21 NCR 2729				
10 NCAC 42B.2404						10:21 NCR 2729				
10 NCAC 42B.2405						10:21 NCR 2729				
10 NCAC 42C.2010						10:21 NCR 2729				
10 NCAC 42C.2011						10:21 NCR 2729				
10 NCAC 42C.2012						10:21 NCR 2729				
10 NCAC 42C.3701						10:21 NCR 2729				
10 NCAC 42C.3702						10:21 NCR 2729				
10 NCAC 42C.3703						10:21 NCR 2729				
10 NCAC 42C.3704						10:21 NCR 2729				
10 NCAC 42D.1409						10:21 NCR 2729				

**CUMULATIVE INDEX**  
(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
10 NCAC 42D.1410					10:21 NCR 2729					
10 NCAC 42D.1411					10:21 NCR 2729					
10 NCAC 42D.1827					10:21 NCR 2729					
10 NCAC 42D.1828					10:21 NCR 2729					
10 NCAC 42D.1829					10:21 NCR 2729					
10 NCAC 42D.1830					10:21 NCR 2729					
10 NCAC 42V.0201					10:20 NCR 2597	11:03 NCR 111	*			
10 NCAC 42V.0802					10:20 NCR 2597	11:03 NCR 111	*			
10 NCAC 42V.0803					10:20 NCR 2597	11:03 NCR 111	*			
10 NCAC 49A.0002					11:08 NCR 528					
10 NCAC 49B.0202					11:08 NCR 528					
10 NCAC 49B.0310					11:08 NCR 528					
10 NCAC 49B.0502					11:08 NCR 528					
<b>Vocational Rehabilitation Services</b>										
10 NCAC 20B.0200					11:08 NCR 450					
10 NCAC 20C.0600					11:08 NCR 450					
10 NCAC 20D.0200					11:08 NCR 450					
<b>INSURANCE</b>										
11 NCAC 12.0551			10:18 NCR 2399		10:22 NCR 2831	*		Approve	05/16/96	*
11 NCAC 16.0703			10:18 NCR 2399		10:22 NCR 2832	*		Approve	05/16/96	
<b>JUSTICE</b>										
<b>Attorney General/Company Police</b>										
12 NCAC 021.0101								Approve	04/18/96	11:04 NCR 208
12 NCAC 021.0206								Approve	04/18/96	11:04 NCR 208
12 NCAC 021.0210								Approve	04/18/96	11:04 NCR 208
<b>Alarm Systems Licensing Board</b>										
12 NCAC 11.0202					10:24 NCR 3057					
<b>LABOR</b>										

**CUMULATIVE INDEX**  
(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
<b>Occupational Safety and Health</b>										
13 NCAC 07F	11:03 NCAC 106									
13 NCAC 07F 0101				11:03 NCR 119						
13 NCAC 07F 0201	11:03 NCR 106									
13 NCAC 07F 0301	11:03 NCR 106									
<b>MEDICAL BOARD</b>										
21 NCAC 32H 0101	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0102	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0201	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0203	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0301	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0302	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0303	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0401	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0402	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0403	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0404	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0406	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0407	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0408	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0409	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0501	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0502	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0504	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0505	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0506	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221
21 NCAC 32H 0507	10:18 NCR 2400				10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221

**CUMULATIVE INDEX**  
(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
21 NCAC 32H .0601	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221		
21 NCAC 32H .0602	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96		11:04 NCR 221		
21 NCAC 32H .0701	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221		
21 NCAC 32H .0702	10:18 NCR 2400		10:22 NCR 2835	*	Object	04/18/96		<b>Returned to Agency 6/20/96</b>		
21 NCAC 32H .0801	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221		
21 NCAC 32H .0901	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*	11:04 NCR 221		
21 NCAC 32H .0902	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96		11:04 NCR 221		
<b>PSYCHOLOGY BOARD</b>										
21 NCAC 54 .2704					Approve	04/18/96		11:04 NCR 236		
21 NCAC 54 .2706					Approve	04/18/96		11:04 NCR 236		
<b>PUBLIC EDUCATION</b>										
16 NCAC 01A .0001					Approve	05/16/96		11:05 NCR 286		
16 NCAC 01A .0003					Approve	05/16/96		11:05 NCR 283		
<b>Standards Board for Public School Administration</b>										
16 NCAC 07			10:23 NCR 2957							
<b>REFRIGERATION EXAMINERS</b>										
21 NCAC 60 .0204			11:05 NCR 272							
21 NCAC 60 .0207			11:05 NCR 272							
21 NCAC 60 .0314			11:05 NCR 272							
<b>REAL ESTATE COMMISSION</b>										
21 NCAC 58			11:07 NCR 408							
21 NCAC 58A .0101			10:22 NCR 2829					11:03 NCR 114		
21 NCAC 58A .0105			10:22 NCR 2829					11:03 NCR 114	*	
21 NCAC 58A .0109			10:22 NCR 2829					11:03 NCR 114	*	
21 NCAC 58A .0110			10:22 NCR 2829					11:03 NCR 114	*	
21 NCAC 58A .0302			10:22 NCR 2829					11:03 NCR 114	*	
21 NCAC 58A .0503			10:22 NCR 2829					11:03 NCR 114	*	

**CUMULATIVE INDEX**  
(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
21 NCAC 58A.0504	10:22 NCR 2829				11:03 NCR 114	*				11:05 NCR 284
21 NCAC 58A.1501	10:22 NCR 2829				11:03 NCR 114	*				11:04 NCR 211
21 NCAC 58A.1502	10:22 NCR 2829				11:03 NCR 114	*				11:04 NCR 211
21 NCAC 58A.1601	10:22 NCR 2835				11:03 NCR 114	*				11:04 NCR 211
<b>REVENUE</b>										
17 NCAC 01C.0504			10:20 NCR 2599							
17 NCAC 01C.0506			10:20 NCR 2599							
17 NCAC 05C.2101					11:03 NCR 113	*				
17 NCAC 06B.0612					10:24 NCR 3059	*	Approve	05/16/96	*	
17 NCAC 06B.3716					10:22 NCR 2833	*	Approve	04/18/96	*	
17 NCAC 07B.1101					10:22 NCR 2833	*	Approve	04/18/96	*	
17 NCAC 07B.1105					10:21 NCR 2688	*	Approve	04/18/96	*	
17 NCAC 07B.1108					10:21 NCR 2688	*	Approve	04/18/96	*	
17 NCAC 07B.1109					10:21 NCR 2688	*	Approve	04/18/96	*	
17 NCAC 07B.1110					10:21 NCR 2688	*	Approve	04/18/96	*	
17 NCAC 07B.1112					10:21 NCR 2688	*	Approve	04/18/96	*	
17 NCAC 07B.1114					10:21 NCR 2688	*	Approve	04/18/96	*	
17 NCAC 07B.1123					10:21 NCR 2688	*	Approve	04/18/96	*	
17 NCAC 07B.1602					10:21 NCR 2688	*	Approve	04/18/96	*	
17 NCAC 07B.1701					10:21 NCR 2688	*	Approve	04/18/96	*	
17 NCAC 07B.1702					10:21 NCR 2688	*	Approve	04/18/96	*	
17 NCAC 07B.1802					10:21 NCR 2688	*	Approve	04/18/96	*	
17 NCAC 07B.2401					10:21 NCR 2688	*	Approve	04/18/96	*	
17 NCAC 07B.2601					10:21 NCR 2688	*	Approve	04/18/96	*	
17 NCAC 07B.4002					10:21 NCR 2688	*	Approve	04/18/96	*	
17 NCAC 07B.4004					10:21 NCR 2688	*	Approve	04/18/96	*	
17 NCAC 07B.4008					10:21 NCR 2688	*	Approve	04/18/96	*	

**CUMULATIVE INDEX**  
(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
17 NCAC 07B .4301			10:21 NCR 2688	*	Approve	04/18/96	*			11:04 NCR 212
17 NCAC 07B .4408			10:21 NCR 2688	*	Approve	04/18/96	*			11:04 NCR 212
17 NCAC 07B .4902			10:21 NCR 2688	*	Approve	04/18/96	*			11:04 NCR 212
Tax Review Board										11:02 NCR 72
Tax Review Board										11:06 NCR 318

**SOCIAL WORK, BOARD OF**

21 NCAC 63 .0306			10:21 NCR 2739	11:03 NCR 118	*					
<b>SOIL SCIENTISTS, BOARD FOR LICENSING</b>										
21 NCAC 69 .0101	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200	*						
21 NCAC 69 .0102	10:19 NCR 2507	11:04 NCR 200	11:08 NCR 523	*						
21 NCAC 69 .0103	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200	*						
21 NCAC 69 .0104	10:19 NCR 2507	11:04 NCR 200	11:08 NCR 523	*						
21 NCAC 69 .0201	10:19 NCR 2507	11:04 NCR 200	11:08 NCR 523	*						
21 NCAC 69 .0202	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200	*						
21 NCAC 69 .0301	10:19 NCR 2507	11:04 NCR 200	11:08 NCR 523	*						
21 NCAC 69 .0302	10:19 NCR 2507	11:04 NCR 200	11:08 NCR 523	*						
21 NCAC 69 .0303	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200	*						
21 NCAC 69 .0304	10:19 NCR 2507	11:04 NCR 200	11:08 NCR 523	*						

**CUMULATIVE INDEX**  
(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
21 NCAC 69 .0305	10:19 NCR 2507	11:04 NCR 200			11:04 NCR 200	*				
21 NCAC 69 .0306	10:19 NCR 2507	11:04 NCR 200			11:08 NCR 523	*				
21 NCAC 69 .0307	10:19 NCR 2507	11:04 NCR 200			11:04 NCR 200	*				
					11:08 NCR 523	*				
21 NCAC 69 .0308	10:19 NCR 2507	11:04 NCR 200			11:04 NCR 200	*				
21 NCAC 69 .0401	10:19 NCR 2507	11:04 NCR 200			11:08 NCR 523	*				
21 NCAC 69 .0402	10:19 NCR 2507	11:04 NCR 200			11:04 NCR 200	*				
					11:08 NCR 523	*				
21 NCAC 69 .0501	10:19 NCR 2507	11:04 NCR 200			11:04 NCR 200	*				
					11:08 NCR 523	*				
<b>STATE PERSONNEL COMMISSION</b>										
25 NCAC 01J.0613			10:23 NCR 2960							
25 NCAC 01J.0613										
<b>SUBSTANCE ABUSE PROFESSIONALS CERTIFICATION BOARD</b>										
21 NCAC 68	10:18 NCR 2401				*	Approve	04/18/96	*		11:04 NCR 238
21 NCAC 68 .0101	10:18 NCR 2401				*	Approve	04/18/96			11:04 NCR 238
21 NCAC 68 .0102	10:18 NCR 2401				*	Approve	04/18/96			11:04 NCR 238
21 NCAC 68 0201	10:18 NCR 2401				*	Approve	04/18/96	*		11:04 NCR 238
21 NCAC 68 .0202	10:18 NCR 2401				*	Approve	04/18/96			11:04 NCR 238
21 NCAC 68 .0203	10:18 NCR 2401				*	Approve	04/18/96	*		11:04 NCR 238
21 NCAC 68 0204	10:18 NCR 2401				*	Approve	04/18/96	*		11:04 NCR 238
21 NCAC 68 .0205	10:18 NCR 2401				*	Approve	04/18/96	*		11:04 NCR 238
21 NCAC 68 .0206	10:18 NCR 2401				*	Approve	04/18/96	*		11:04 NCR 238
21 NCAC 68 0207	10:18 NCR 2401				*	Approve	04/18/96			11:04 NCR 238

**CUMULATIVE INDEX**  
(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
21 NCAC 68.0208	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0209	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0210	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0211	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0212	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0213	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0401	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0402	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0403	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0404	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0405	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0406	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0407	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0701	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0702	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0703	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0704	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0705	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0706	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0707	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0708	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
21 NCAC 68.0709	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*	11:04 NCR 238		
<b>TRANSPORTATION</b>										
19A NCAC 06B.0401	10:23 NCR 2957				11:05 NCR 279	S				
19A NCAC 06B.0402	10:23 NCR 2957				11:05 NCR 279	S				
19A NCAC 06B.0403	10:23 NCR 2957				11:05 NCR 279	S				
19A NCAC 06B.0404	10:23 NCR 2957				11:05 NCR 279	S				
19A NCAC 06B.0405	10:23 NCR 2957				11:05 NCR 279	S				

**CUMULATIVE INDEX**  
(April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
19A NCAC 06B.0406	10:23 NCR 2957				11:05 NCR 279		S			
19A NCAC 06B.0407	10:23 NCR 2957				11:05 NCR 279		S			
19A NCAC 06B.0408	10:23 NCR 2957				11:05 NCR 279		S			
19A NCAC 06B.0409	10:23 NCR 2957				11:05 NCR 279		S			
19A NCAC 06B.0410	10:23 NCR 2957				11:05 NCR 279		S			
19A NCAC 06B.0411	10:23 NCR 2957				11:05 NCR 279		S			
19A NCAC 06B.0412	10:23 NCR 2957				11:05 NCR 279		S			
19A NCAC 06B.0413	10:23 NCR 2957				11:05 NCR 279		S			
19A NCAC 06B.0414	10:23 NCR 2957				11:05 NCR 279		S			
19A NCAC 06B.0415	10:23 NCR 2957				11:05 NCR 279		S			
19A NCAC 06B.0416	10:23 NCR 2957				11:05 NCR 279		S			
19A NCAC 06B.0417	10:23 NCR 2957				11:05 NCR 279		S			
<b>Highways, Division of</b>										
19A NCAC 02D.1101	10:23 NCR 2957				11:05 NCR 274		*			
19A NCAC 02D.1102	10:23 NCR 2957				11:05 NCR 274		*			
19A NCAC 02D.1103	10:23 NCR 2957				11:05 NCR 274		*			
19A NCAC 02D.1104	10:23 NCR 2957				11:05 NCR 274		*			
19A NCAC 02D.1105	10:23 NCR 2957				11:05 NCR 274		*			
19A NCAC 02D.1106	10:23 NCR 2957				11:05 NCR 274		*			
19A NCAC 02D.1107	10:23 NCR 2957				11:05 NCR 274		*			
19A NCAC 02D.1108	10:23 NCR 2957				11:05 NCR 274		*			
19A NCAC 02D.1109	10:23 NCR 2957				11:05 NCR 274		*			
19A NCAC 02D.1110	10:23 NCR 2957				11:05 NCR 274		*			
19A NCAC 02D.1111	10:23 NCR 2957				11:05 NCR 274		*			
19A NCAC 02D.1112	10:23 NCR 2957				11:05 NCR 274		*			
<b>Motor Vehicles, Division of</b>										
19A NCAC 03E.0500	11:01 NCR 13									
19A NCAC 03E.0501	11:01 NCR 13									
										11:07 NCR 416

**CUMULATIVE INDEX**  
 (April 1996 - March 1997)

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
19A NCAC 03E .0502		11:01 NCR 13			11:07 NCR 416	*				
19A NCAC 03E .0510		11:01 NCR 13			11:07 NCR 416	*				
19A NCAC 03E .0511		11:01 NCR 13			11:07 NCR 416	*				
19A NCAC 03E .0512		11:01 NCR 13			11:07 NCR 416	*				
19A NCAC 03E .0513		11:01 NCR 13			11:07 NCR 416	*				
19A NCAC 03E .0514		11:01 NCR 13			11:07 NCR 416	*				
19A NCAC 03E .0515		11:01 NCR 13			11:07 NCR 416	*				
19A NCAC 03E .0518		11:01 NCR 13			11:07 NCR 416	*				
19A NCAC 03E .0519		11:01 NCR 13			11:07 NCR 416	*				
19A NCAC 03E .0522		11:01 NCR 13			11:07 NCR 416	*				



**BARCLAYS OFFICIAL NORTH CAROLINA ADMINISTRATIVE CODE - 1995**

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
<b>Title 1 - Dept. of Administration - Full Title</b>	<b>201 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Division of Purchase & Contract	201 10 05	\$21.00	\$30.00
Federal Block Grant Funds	201 10 33	\$17.50	\$25.00
<b>Title 2 - Dept. of Agriculture - Full Title</b>	<b>202 00 00</b>	<b>\$98.00</b>	<b>\$140.00</b>
Food & Drug Protection Division	202 15 09	\$28.00	\$40.00
Structural Pest Control Committee	202 15 34	\$21.00	\$30.00
Agricultural Markets	202 15 43	\$21.00	\$30.00
Plant Industry	202 15 48	\$21.00	\$30.00
Animal Industry	202 15 52	\$21.00	\$30.00
<b>Title 3 - Dept. of State Auditor - Full Title</b>	<b>203 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 4 - Dept. of Commerce - Full Title</b>	<b>204 00 00</b>	<b>\$87.50</b>	<b>\$125.00</b>
Alcoholic Beverage Control Commission	204 15 02	\$12.00	\$40.00
Banking Commission	204 15 03	\$24.50	\$35.00
Credit Union Division	204 15 06	\$14.00	\$20.00
Savings & Loan Division	204 15 09	\$14.00	\$20.00
Industrial Commission/Workers Compensation	204 15 10	\$14.00	\$20.00
Savings Institutions Division	204 15 16	\$24.50	\$35.00
<b>Title 5 - Dept. of Corrections - Full Title</b>	<b>205 00 00</b>	<b>\$56.00</b>	<b>\$80.00</b>
Division of Prisons	205 15 02	\$24.50	\$35.00
<b>Title 6 - Council of State - Full Title</b>	<b>206 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
<b>Title 7 - Dept. of Cultural Resources - Full Title</b>	<b>207 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
<b>Title 8 - State Board of Elections - Full Title</b>	<b>208 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 9 - Offices of the Governor &amp; Lt. Governor - Full Title</b>	<b>209 00 00</b>	<b>\$31.50</b>	<b>\$45.00</b>
<b>Title 10 - Dept. of Human Resources - Full Title</b>	<b>210 00 00</b>	<b>\$346.50</b>	<b>\$495.00</b>
Licensing of Health Facilities	210 20 10	\$45.50	\$65.00
Detention Facilities	210 20 20	\$31.50	\$45.00
Mental Health & Rehabilitation Services	210 20 30	\$77.00	\$110.00
Social Services	210 20 40	\$119.00	\$170.00
Children Services/Day Care	210 20 41	\$31.50	\$45.00
Services for the Aging	210 20 42	\$31.50	\$45.00
Services for the Blind	210 20 43	\$28.00	\$40.00
Services for the Deaf & Hard of Hearing	210 20 44	\$17.50	\$25.00
Employment Opportunities	210 20 45	\$35.00	\$50.00
<b>Title 11 - Dept. of Insurance - Full Title</b>	<b>211 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Insurance	211 10 01	\$56.00	\$80.00
Consumer Services	211 10 04	\$24.50	\$35.00
Fire & Rescue Services	211 10 05	\$17.50	\$25.00
Agent Services	211 10 06	\$28.00	\$40.00
Engineering & Building Codes	211 10 08	\$21.00	\$30.00
<b>Title 12 - Dept. of Justice - Full Title</b>	<b>212 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Private Protective Services	212 10 07	\$21.00	\$30.00
Police & Sheriff's Education & Training Standards	212 10 09	\$31.50	\$45.00
NC Alarm Systems Licensing Board	212 10 11	\$17.50	\$25.00
<b>Title 13 - Dept. of Labor - Full Title</b>	<b>213 00 00</b>	<b>\$77.00</b>	<b>\$110.00</b>
Mine & Quarry Safety	213 15 06	\$14.00	\$20.00
General Safety/OSHA	213 20 00	\$31.50	\$45.00
Wage & Hour Rules	213 15 12	\$14.00	\$20.00
Boiler & Pressure Vessel Safety	213 15 13	\$14.00	\$20.00
Apprenticeship & Training	213 15 14	\$14.00	\$20.00
Elevator & Amusement Device Safety	213 15 15	\$14.00	\$20.00
<b>Title 14A - Dept. of Crime Control &amp; Public Safety - Full Title</b>	<b>214 00 00</b>	<b>\$31.50</b>	<b>\$45.00</b>
Alcohol Law Enforcement	214 00 08	\$17.50	\$25.00
Victims Compensation Fund	214 00 11	\$14.00	\$20.00
<b>Title 15A - Dept. of Environ., Health, &amp; Nat. Resources - Full Title</b>	<b>215 00 00</b>	<b>\$276.50</b>	<b>\$395.00</b>
Environmental Management	215 15 00	\$115.50	\$165.00
Air Quality	215 15 10	\$49.00	\$70.00
Water Quality	215 15 20	\$49.00	\$70.00
Land & Waste Management	215 15 30	\$56.00	\$80.00
Solid Waste Management	215 15 31	\$35.00	\$50.00
Underground Storage Tanks	215 15 32	\$17.50	\$25.00

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Coastal Management	215 15 40	\$31.50	\$45.00
Environmental Health	215 25 00	\$105.00	\$150.00
Radiation/Nuclear Waste	215 25 10	\$42.00	\$60.00
Sanitation	215 25 20	\$35.00	\$50.00
Public Health	215 25 30	\$59.50	\$85.00
Intoxilizer & Breathalyser	215 25 31	\$17.50	\$25.00
<b>Title 16 - Dept. of Public Instruction - Full Title</b>	<b>216 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
Elementary & Secondary Education	216 10 06	\$21.00	\$30.00
<b>Title 17 - Dept. of Revenue - Full Title</b>	<b>217 00 00</b>	<b>\$91.00</b>	<b>\$130.00</b>
Taxes on Individuals	217 15 10	\$31.50	\$45.00
Taxes on Business	217 15 20	\$56.00	\$80.00
Sales & Use Tax Division	217 15 27	\$31.50	\$45.00
Motor Fuels Tax Division	217 15 29	\$21.00	\$30.00
<b>Title 18 - Secretary of State - Full Title</b>	<b>218 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
Securities Division	218 10 06	\$21.00	\$30.00
<b>Title 19A - Dept. of Transportation - Full Title</b>	<b>219 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Division of Highways	219 10 02	\$28.00	\$40.00
Division of Motor Vehicles	219 10 03	\$35.00	\$50.00
<b>Title 20 - Dept. of the State Treasurer - Full Title</b>	<b>220 00 00</b>	<b>\$31.50</b>	<b>\$45.00</b>
<b>Title 21 - Occupational Licensing Boards - Full Title</b>	<b>221 00 00</b>	<b>\$143.50</b>	<b>\$205.00</b>
<b>Title 22 - Administrative Procedures Act - Repealed</b>	<b>222 00 00</b>	<b>\$0.00</b>	<b>\$0.00</b>
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